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ABSTRACT

The rationales for various state-finance distribution formulas, from 1896 to the present, are explained along with the rationales of the lawsuits questioning their validity. Chapter 1 describes attempts at financial equity from 1896 to the 1950s. Chapter 2 examines the current status of financing public education, emphasizing a state's obligation to provide equal educational opportunity despite the vast difference in the distribution of wealth from one district to another. Chapter 3 examines state and local revenues and the equity for taxpayers and students. Chapter 4 explains the types of distribution formulas, the state methods of aiding compensatory education, and state cost-equalization schemes. Chapter 5 explains statistical techniques used to estimate the degree of equity achieved. Chapter 6 shows the rationales used to challenge a state's financial formula. Chapter 7 describes specific lawsuits from "Serrano v. Priest" to "San Antonio v. Rodriguez." Chapter 8 examines contemporary challenges since "Rodriguez." Chapter 9 surveys current litigation strategies that have been successful. Chapter 10 offers predictions for future educational finance issues. A useful appendix includes each state's constitutional wording for education and equity concerns. (RKJ)

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EDUCATIONAL FINANCE LAW: Constitutional Challenges to State Aid Plans–An Analysis of Strategies

SECOND EDITION

R. Craig Wood and David C. Thompson

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CHAPTER 1

INTRODUCTION TO EDUCATION FINANCE LITIGATION

Introduction

> The gradual development of the principle of equality is a providential fact. It has all the chief characteristics of such a fact: it is universal, it is durable, it constantly eludes all human interference, and all events as well as all men contribute to its progress.[1]

In *Democracy in America*, Alexis de Tocqueville noted that even in its formative stages our society has always attempted to be a country in which individuals could achieve a viable economically and socially productive position and receive the residual financial rewards based solely on their individual merits and work ethic. This concept of individual merit based on one's ability, achievement, and industriousness permeates the concept of political and social equality throughout the works of the early political thinkers of our society.

Equity and equality are often utilized in very similar, if not synonymous, manner. This usage is not entirely correct in view of the conceptual framework of education finance theory or operations. Equality is not necessarily equity. In reality, equity significantly extends beyond the more basic concept of equality. Equity must be defined as treating individuals with a standard that reflects a basic and fundamental sense of fairness. Equity is further defined as treating unequals in an unequal manner so as to produce some form of fairness of treatment. An inherent sense of fairness or justice between or among individuals within our society must exist or at a minimum be sought by society. It is difficult for society to reach these often elusive and far reaching goals of equity. Equity is sometimes utilized via a vaguely conceptualized notion in guiding popular ideas within society. It is often a function of the popular culture with no basic fundamental merit or theoretical framework. Equity can also be a popular ideal against which programs and laws are balanced. Lastly, equity may be a concept that reflects existing laws and programs that provide firm and often times rigid standards against which a practice is balanced.[2]

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[1] ALEXIS DE TOCCQUEVILLE, DEMOCRACY IN AMERICA, ix (1835) (Phillips Bradley ed., Vintage Books 1945).

[2] *See* W. B. DORFMAN, EDUCATIONAL OPPORTUNITY 9 (1978).

Oftentimes, certain concepts become permeated within the popular culture to reflect various political agendas that are without fundamental factual or conceptual bases for implementation. Thus, in a very brief fashion, this reflects that equity often times remains an elusive ideal which is highly dependent on individual or collective perceptions and philosophies of a given generation.

These collective perceptions transcend many issues e.g., the narrow legal definitions of suspect classifications. That is not to suggest that these perceptions have, or do not have, legal merit. It merely states the obvious: that collective groups have perceptions of equity that may, or may not, be in congruence with legal theory. This is a natural tension that permeates society and some would argue it is merely de Tocqueville's observations being operationalized. Regardless, equity attempts to achieve a higher level of justice with resultant rights in order to achieve what is perceived to be a greater, better, and more economically productive society. Unfortunately, equity concerns are often misnamed within the popular culture with what are, in reality, political agendas or collective misperceptions concerning collective and individual failures of society. The distinction is often difficult to grasp and articulate given the nature of these agendas.

Public elementary and secondary education is reserved for state governments under the Tenth Amendment of the United States Constitution. Thus, each state legislature has created a system of state and local moneys for the financing of public elementary and secondary education that has evolved over a lengthy period of time. The financing of public education has a long and illustrious history involving the tensions within society in terms of education finance methodology and adjudicating these methodologies relative to various equity agendas, including perceived wrongs within society.[3] Regardless, many substantive political, educational, and economic issues remain unclear to public policy makers concerning the most acceptable manner of equitably and adequately funding public elementary and secondary education. Basic and fundamental questions have yet to be agreed upon within this political, economic, and educational arena. These issues are so basic, yet they have to emerge with a clear consensus by state policy makers. Thus, many of these fundamental tensions will continue to emerge as ones resulting in education finance litigation. These issues tend to cluster concerning the fundamental purposes for which society finances public education. Many researchers and public commentators have puzzled over these goals, many of which tend to be mutually exclusive as to the purpose of state financing methodologies. Illustrating this tension would be the public policy issues of whether public schools are to be financed based on the principles of equity or whether they are to be financed based on providing excellence in order for our society to compete in the world marketplaces of the future.[4] Is fulfilling minimal standards for all students or educating fewer students for academic excellence to be the criteria for society's decisions? Are public moneys to be used in some manner to support private education under the concept of state sponsored voucher, tax, or choice plans? While certain arguments may be advanced, no tension appears greater than those compounded by diminishing scarce fiscal resources in support of public education for private, often religiously affiliated, education. These tensions, which are numerous and varied in nature, collectively demonstrate that society has yet to reach consensus on the purposes and goals of its own public educational system. These tensions, as well as the inherent conflicts of attempting to engage in competing policies, will remain for the future.

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[3] The authors by design make no attempt to describe and analyze all education finance cases that have appeared in the courts over the years. There are several commentaries within this broad arena reflecting a number of excellent publications *see, e.g.*, A. Bailey, School Finance Litigation: A Renewed Impulse For Reform (1991); *See generally*, Symposium, *Investing in Our Children's Future: School Finance Reform in the '90s*, 28 Harv. J. On Legis. 293 (1991); M. W. La Morte, *Courts Continue to Address the Wealth Disparity Issue*, 11 Educ. Evaluation & Pol'y Analysis 3-15 (1989); M. G. Yudof, *School Finance Reform: Don't Worry, Be Happy*, Nolpe Notes, May 1991 at 1, 1-5.

State policy makers will continue to face the dilemmas inseparable from attempting to achieve excellence in public education.[5] By its very nature, the achievement of excellence in public education is extremely difficult to accomplish. Given the financial resources and political constrictions that exist within society, this achievement is perhaps improbable in the near future. Additionally, there is no compelling evidence to suggest that either the potential constraints or limited financial resources will change over the next several generations.

Further, one may continue to advance the argument that fiscal equalization of public education has been used as a device to constrain taxes at the state and local level and to perpetuate limited access to adequate revenues.[6] The equalization of resources in funding public elementary and secondary education can have more, or less, beneficial aspects depending upon how distribution formulas are operationalized.

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[4] *See, e.g.*, R. C. Wood and D. S. Honeyman, *Adequacy and Excellence: Twin Dilemmas for the States*, 17 EDUC. CONSIDERATIONS, 27-30 (1990).

[5] *Id.*

[6] This argument was first presented by R. L. Johns, THE EVOLUTION OF THE EQUALIZATION OF EDUCATIONAL OPPORTUNITY IN FLORIDA (1977).

The nation's financial community is not monolithic in nature. Often, the financial community has competing economic as well as social interests. What may benefit one segment of the economy may not benefit another. In many states, the business community has led the charge for education reform in order to produce a more highly trained workforce, while opposing any increase of personal or corporate taxation. In other states, the business community has opposed any greater moneys for public education, as it is thought that a higher trained workforce would merely raise productivity costs for the private sector.

The struggle for adequacy and excellence is one that has resulted in conflict throughout generations of American society. Many segments of American society view public education as the vehicle to escape a life of poverty and perceived injustice. The hope of personal advancement for the next generation has long been cherished by each preceding generation. Yet, these individual and collective goals of society must be supported in a fiscally adequate and equitable manner. These aspirations must be balanced with the ability of society to fund such aspirations.

The goal of obtaining adequate and excellent public education is a complex undertaking. The cost of excellence is often politically or financially unacceptable. Conversely, the equitable distribution of scarce resources may result in an equality of poverty. This equality of poverty and the potential for lack of opportunity it engenders hardly serves to further societal goals. The overriding goal must be the equalization of excellence for the next generation in order to protect the economic and social well being of society.

Throughout education finance litigation, certain arguments have emerged. These thrusts include:

- suits that seek to establish education as a fundamental right because of public education's impact on social and economic structures within society; and/or
- suits that seek to show how funding disparities result in unequal opportunities by treating students in poor school districts differently from students who have greater access to fiscal resources.[7]

Early History of Education Finance Litigation and Thought

The U.S. Supreme Court heard *Plessy v. Ferguson* in 1896.[8] This suit was a challenge to the law that required separate, but equal, facilities for blacks and whites while utilizing public transportation. The Court recognized the importance of the decision to the public schools of America. The court opined:

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[7] *School Finance and the Courts: A Reanalysis of Progress*, 59 EDUC. L. REP. (West) 945 (June 21, 1990).

[8] Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138 (1896).

> The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.[9]

This argument appeared in subsequent litigation in testing its application to future litigation.[10] The first significant and specific public school suit based on the *Plessy* doctrine occurred in *Cumming v. Richmond* in 1899.[11] A Georgia county school board refused to provide a high school to minority students when it had in fact provided one to white children of the district. This case is the first specific instance concerning funding public education before the Supreme Court. The school board argued that it could not fiscally operate two high schools within the district. The plaintiffs argued that either a school for minority children would have to be created, or the school for the white children would have to be closed. The Court's reasoning reflected a curious cost-effective standard by today's value system:

> [I]f that were done, the result would only be to take from white children educational privileges enjoyed by them, without giving to colored children additional opportunities for the education furnished in high schools. The colored children of the county would not be advanced in the matter of their education by a decree compelling the defendant board to cease giving support to a high school for white children.[12]

This decision made a major distinction between what was viewed as a nonarbitrary denial of equal treatment as opposed to a hostile denial of equal treatment as prohibited by the Fourteenth Amendment.[13] *Plessy* and *Cumming* established the Court's thinking for fifty years in this broad arena.

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[9] *Plessy*, 163 U.S. at 544.

[10] A. E. WISE, RICH SCHOOLS, POOR SCHOOLS 13 (1968).

[11] Cumming v. Board of Educ. of Richmond County, 175 U.S. 528, 20 S. Ct. 197 (1899).

[12] *Cumming*, 175 U.S. at 544.

[13] See P. ZIRKEL AND S. N. RICHARDSON, A DIGEST OF SUPREME COURT DECISIONS AFFECTING EDUCATION 87 (1988).

Early Education Finance Theory

In 1906, Elwood Cubberley wrote the seminal work, *School Funds and Their Apportionment*, in which he developed the concept of equalization of education funding for schools.[14] Cubberley viewed all children as equally important and thus society owed to each an equal share of the state fiscal responsibility and wealth. Cubberley originated the first clear conceptualization of fiscal equity as it influenced educational opportunity. Specifically, Cubberley wrote "all the children of the state are equally important and are entitled to have the same advantages."[15] Cubberley's work was conceived during a time in which public schools were, at best, marginal in quality and highly unequal in educational offerings and resources throughout society. Cubberley wrote of the need to motivate school districts to go beyond the minimal standards of the time. Cubberley viewed the goal of financing public schools as providing an equitable level of funding, albeit a rather modest level by today's standards, and a mechanism to provide local school districts with an opportunity to improve the level of education within various limitations. He advocated a flat grant or some form of a minimal dollar guarantee on which a school district could build. The present day concept that a state should equalize educational programs to assure equal educational opportunity, however minimally, emerged from Cubberley's work during the early part of the 1900s. Critics have noted that equal educational opportunity has not significantly advanced since the days of Cubberley. Specifically, as late as 1992 it was noted that "[t]he principle of equal educational opportunity serves to justify demanding of public education something short of full equality; it demands only equality of opportunities, which is then the responsibility of school children or their parents to act on . . . ."[16]

The first known state education finance distribution formula challenge was in 1912 when the Supreme Judicial Court of Maine issued an opinion in *Sawyer v. Gilmore*.[17] The plaintiffs argued a variety of concerns from unequal taxation to unequal educational opportunities, as well as the denial of the Equal Protection Clause of the Fourteenth Amendment. The court ruled against the plaintiffs, stating that the legislature had treated all residents alike and thus no violation was inherent. Further, the court observed that the state legislature could not have an unconstitutional finance system as long as its distribution scheme was not expressly prohibited by the state constitution.

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[14] E. P. Cubberley, School Funds and Their Apportionment (1906).

[15] *Id.* at 18.

[16] K. R. Howe, *Liberal Democracy, Equal Educational Opportunity, and the Challenge of Multiculturalism*, 29 Am. Educ. Res. J. 457 (1992).

[17] Sawyer v. Gilmore, 109 Me. 169, 83 A. 673 (1912).

In the early 1920s, Harlan Updegraff significantly extended Cubberley's thoughts by advancing the concept that as local school districts were able to spend greater moneys for public education, the state would then vary the amount of state support as a result of those local efforts. In this manner, Updegraff argued, every child could be assured a minimum level of education in relation to the levels that other children received regardless of the location within a given state. He envisioned an education finance system in which funds were distributed based on teacher units as the unit of distribution.[18] Updegraff argued that a variable level foundation program would be directly linked to the allocation of moneys available for education and the state would then provide the necessary funding to establish a minimum level of educational programs for all school districts within a given state.[19]

In the early 1920s, Strayer and Haig operationally advanced these concepts by developing a series of education finance formulas that attempted to assure these education finance goals.[20] Strayer and Haig attempted to operationalize the following goals:

- Ensuring equal educational facilities to every child in the state,
- Providing for uniform tax effort throughout the state,
- Ensuring that the tax effort is related to the ability to pay, and
- In no way hindering the ability of local districts to raise funds above the minimal level to provide a better education for their children.[21]

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[18] A teacher unit in education finance is the concept that for a certain number of qualified students the district then receives the funding for the average cost of a teacher. Thus, *e.g.*, if a teacher unit were to be set at 25 at a cost of $33,000 and if the district were to have 1,000 students, the district would receive 40 teacher units for which the state would then reimburse the school district in the amount of $1,320,000. In reality, the numbers utilized for a teacher unit will vary based upon weights and categories of students, as well as classifications of school districts. For example, small school districts may have a lower teacher unit number in order to overcome the inherent diseconomies of scale. Additionally, the state could allocate moneys based on a percentage of the value of each teacher unit and/or allocate moneys based on a sliding scale resulting from the wealth of the local school district.

[19] *See, e.g.*, H. UPDEGRAFF AND L. A. KING, SURVEY OF THE FISCAL POLICIES OF THE STATE OF PENNSYLVANIA IN THE FIELD OF EDUCATION (1922).

[20] G. D. STRAYER AND R. M. HAIG, THE FINANCING OF EDUCATION IN THE STATE OF NEW YORK, REPORT OF THE EDUCATION FINANCE INQUIRY COMMISSION 173 (1923).

[21] *Id.*

These formulas were generically referred to as some form of a foundational program or plan. As a result of the formula, it would be theoretically possible for a given school district not to receive any form of state aid for the general educational program. This would be due to the wealth of the local school district being so great as to nullify any potential state aid. Currently, many states still utilize highly modified formulas based on these early attempts at equalization.

While Strayer and Haig operationalized the early education finance research, they did significantly differ from Cubberley in one key aspect. Cubberley was of the view that the state should reward effort on the part of the local school district. Strayer, in particular, argued the opposing view that to do so would only lead to even greater inequities. Thus even at this early stage of education finance research and theory, this schism appeared. The reader should note that this basic concept is still open to debate and to the actual results of various formulas. One can eloquently suggest that such reward for effort only tends to reward wealthy school districts, while penalizing poorer school districts, as the disparity in available resources can only grow larger over time. The other school of thought is equally eloquent in that it argues that it serves no useful purpose to fiscally penalize a group of students who happen to reside in high wealth school districts. This concept also suggests that to reduce moneys from such school districts is not politically acceptable, and in reality produces insignificant moneys after it is redistributed to other school districts. While this debate in education finance circles will continue, the only resolution to this dilemma will be within the judicial arena as discussed herein.

Regardless of the inherent philosophical and data-driven arguments during this time, education finance research was clearly established within the literature of public education. Education finance researchers were, in essence, legitimately investigating how best to improve education and educational opportunity for all the children of society.

During the 1930s, Henry Morrison advanced the concept of funding public education based on full state funding.[22] Morrison proposed that all public school districts be abolished and that reliance on the property tax be eliminated. Thus, a state would fund all expenditures for public education out of a required state income tax. Morrison's concepts met with great political opposition on the state and the local levels.

The status of financing public elementary and secondary education up through and during the 1950s reflected various forms of foundational programs based on Strayer-Haig concepts extended largely by Paul Mort over the previous decade. These formulas were generally referred to as Strayer-Haig-Mort formulas. Mort essentially operationalized these formulas to reflect required common educational programs.[23] In this manner, it was the intention to ensure that each child within a given state would be offered essentially the same educational opportunity. In order to operationalize this concept, Mort advanced the concept of the weighted pupil in which moneys distributed to school districts would be based on the classification scheme of pupils. This concept could be based on the educational needs of various classifications of students served. Students with special needs, e.g., special education categories, vocational education programs, or students enrolled in high-cost magnet school programs would be funded at differentiated amounts based upon their classification.

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[22] H. C. MORRISON, SCHOOL REVENUE (1930).

During the early to mid-1900s, research on how public schools were financed and the resultant data made significant progress. With greater access to data being collected and disseminated regarding public education, education finance researchers began to make significant progress toward the analysis of education finance data, as well as the resultant educational and financial differences that existed within public elementary and secondary education in the various states. These data-based research studies were often not translated into practice. State policy makers had not implemented the developing research regarding education finance. Many state legislatures were quite reluctant to acknowledge and utilize the research by education finance theorists for a variety of reasons. In fact, even in early lawsuits, the litigation process had difficulty in attempting to operationalize the newest research being disseminated every year within a system that was based on a political process of distributing moneys to public agencies. The early cases were based on fairly simplistic data analyses by today's standards. Nonetheless, they offered a preview of the public policy debate and litigation for years to come.[24] Certain early cases were highly specific as to the distribution formula,[25] e.g., capital outlay mechanisms.[26]

In 1954 the Supreme Court reversed *Plessy v. Ferguson* with its landmark decision in *Brown v. Board of Education*.[27] The equality of educational opportunity in *Brown* is evidenced in the following passage of the decision:

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[23] P. R. MORT, THE MEASUREMENT OF EDUCATIONAL NEED 8 (1924).

[24] *See, e.g.*, Miller v. Korns, 140 N.E. 773 (1923); Ehret v. Kulpmont Sch. Dist., 5 A.2d 188 (1939); State *ex rel.* Bd. of Educ. of City of Sapulpa v. State Bd. of Educ., 196 P.2d 859 (1947).

[25] Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437 (1966); Ingram v. Payton, 222 Ga. 503, 150 S.E.2d 825 (Ga. 1966).

[26] Lebeauf v. State Bd. of Educ. of La. 244 F. Supp. 256 (E.D. La. 1965). The equitable and adequate distribution of capital outlay moneys has been the subject of examination, *see, e.g.*, R. C. Wood, *State Plans for Financing School Construction*, COUNCIL EDUC. PLANNERS J., March/April, 1989, at 7, 7-8.

[27] Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, (1954).

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[28]

Education finance theorists often claim that this passage essentially means that where the government has undertaken to provide education, it must do so to all the residents of a given state on an equal basis. *Brown v. Board of Education*[29] marked the modern era of education finance theorists using the courts as the vehicle to shape education finance change. Social equity would ease into the consciousness of the American public from this point forward.

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[28] *Brown*, 347 U.S. at 492-493.

[29] *See* J. W. GUTHRIE, SCHOOL FINANCE POLICIES AND PRACTICE THE 1980S: A DECADE OF CONFLICT (1980).

CHAPTER 2

EQUAL EDUCATIONAL OPPORTUNITIES AND PUBLIC EDUCATION

The Status of Financing Public Education[30]

Philosophically, as well as operationally, the American public education system is an open system with the intent of educating every child. This system of public education has evolved over the years and is highly reflective of the values and aspirations of society. The primary purpose of public education is to benefit society through increased productivity, improvement of the quality of life and that of society as a whole, and increased standards of living for all people. Having an educated populace with greater economic and social gains for society far outweighs those benefits that generally accrue to an individual.

Everyone in society benefits from having an educated citizenry; therefore, the responsibility to fund education is that of society as a whole. Even those individuals who do not have children benefit because children in general mature to become productive, educated citizens who contribute to the overall quality of life. Every reputable economic study confirms that expenditures for public education are in fact investments, rather than merely expenses, which yield sound cost-effective economic and social returns for society as a whole.

Background

As reflected in the American Constitution, public education is a state responsibility.[31] Without exception, education is a state function and not a local or national function. State legislatures have delegated the implementation of rules and regulations to state departments of education and other state agencies. Legislatures have also created school districts as managerial organizations for the efficient operation of public education within each state. In most states, school districts are responsible for the day-to-day operations of the educational program.

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[30] Much of the discussion of the present status of financing public education is adapted from various publications by the authors including, D. C. Thompson, R. C. Wood, and D. Honeyman, Fiscal Leadership for Schools: Concepts and Practices (1993); R. C. Wood and D. Honeyman, How Public Schools Are Financed (1990); and R. C. Wood, W. Riley, and H. B. Jones, *The Pursuit of Equity in Financing Public Education*, ch. 1 in Major Topics of School Business Management in the Mid 1980s 1, 1-9 (1984).

[31] Those items not specifically mentioned in the Constitution are the responsibility of the states. The Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The legal and administrative parameters that control education vary from state to state. Regardless of the scope of these parameters, a local board of education operates within the guidelines established by the state constitution, state statutes, administrative rules and regulations, as well as the courts. It is the responsibility of the local school board to operate successfully within these parameters. A school board may not exceed these parameters. Equally important, the school board may not divest itself of any of these responsibilities. In summary, under most circumstances, a school board may neither accept additional responsibilities nor reject any current responsibilities.

Equal Educational Opportunities

Regardless of any specific state arrangements, a state has a legal obligation to see that all residents between certain ages are afforded an equal educational opportunity and a basic educational program. Further, this opportunity must be evenly distributed so as not to be a function of the relative wealth, or lack thereof, within a local community. Hopefully, children, regardless of where they live in a given state, will be afforded an equal opportunity to engage in educational programs. Limitations should be only those relating to the individual's ability and desire to achieve. This concept, or goal of equity, is in the best interests of the individual, the community, and the state, as well as the nation as a whole.

A state legislature has plenary power over all of public elementary and secondary education. Because the state legislature is responsible for the education of the residents of the state, it has many powers. In striving for a sound educational system for its residents, the state legislature may generally create, combine, or dissolve school districts. While the local school board is charged with the responsibility of the day-to-day activities of the educational process, the state legislature must meet its responsibilities of ensuring basic educational opportunity for all the residents of a state.

Operationally, this minimum educational program must be extended to all residents by the local school district. However, the wealth of any given state is not distributed in any uniform pattern. The ability of local districts to offer the state-mandated educational program will vary greatly from community to community. In fact, it is normal and quite expected to observe vast financial ability as well as socioeconomic differences between the poorest and the most affluent communities within a given state.

Wealth, regardless of how it is measured, varies naturally; thus inequity is the natural result unless the state intervenes in some manner. In the arena of education finance, intervention by the state is vitally necessary due to the vast differences in the distribution of wealth because equal educational opportunity is in part a function of available resources. The only operationalization of such intervention is through the distribution formula for state aid to local school districts. The method of intervention is the distribution of state aid to local schools in order to offset the effects of local tax base differences. The fundamental concept that funding of public education is based on the property tax is not, within itself, a flaw. If the overall distribution formula were designed and operationalized properly, reliance on the property tax is not fundamentally flawed.

Given these economic realities, if each community were responsible for the total financial costs of offering a public education to the children of the community, then one of the following situations would most likely occur:

- Certain communities would not be able to offer a basic educational program; or
- The residents of the poorest district would be taxed at exorbitantly high rates in order to offer a basic instructional program.

Compounding this dilemma, the wealthiest districts would be able to offer vastly superior public educational programs with little, if any, local taxing effort. Because a child's educational offering should not be a function of the wealth, or lack thereof, within a local community, the state should tax the wealth of all its residents in order to provide fiscal assistance to poorer school districts.

CHAPTER 3

REVENUES AND EQUITY

State Revenues

Generally, states make an appropriation to support public enterprises based on a number of projections. Projections may be based, where applicable, on state income tax revenues, state sales tax revenues, state financial reserves, the number of public school children, the cost of the previous year's program, and the fiscal health of the state at large. These projections are highly interwoven and interdependent on a series of data available at a given point in time and change periodically due to economic conditions. States vary as to the tax revenue utilized to support public education. It is not uncommon to see tax revenues from motor vehicles, utilities and mining properties, inheritances, licenses, fines, as well as a host of other goods and services incorporated into state aid formulas. Generally, all such revenues are fungible in nature so as to make it difficult to clearly trace which revenues support which expenditures. Certain funds may be earmarked for public education, e.g., the most common being lottery revenues.[32] The bulk of funds for public elementary and secondary education are general revenues. Various other taxes support public education but are relatively small compared to income and sales taxes. In certain states, various other revenues are available to fund education e.g., utility taxes.

As a generalization, any state revenues collected in support of public education will represent a broader base than any local tax collections.[33] From an education finance statistical viewpoint, anytime the tax base is increased, the likelihood of unfair taxation is diminished. Hence, state income and state sales taxes, in a sense, are thought to be superior to any local property tax. This is due to the fact that state income and state sales taxes rely on the wealth of the state as a whole, rather than the wealth of a local community to fund public education. Thus, with the growth of these state revenues, the likelihood of having more of a fiscally neutral system for financing public education is enhanced.[34]

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[32] *See, e.g.*, S. D. Stark, R. C. Wood, and D. Honeyman, *The Florida Education Lottery: Its Use as a Substitute for Existing Funds and its Effects on the Equity of Public School Funding*, 18 J. EDUC. FIN. vol. 18, no. 3, 1993, 231, 242.

[33] For a discussion of the conflicts of statewide equity issues versus those of local policy makers *see e.g.*, R. C. Wood, *New Revenues For Financing Education at the Local Level*, ch. 3 in THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE: TENTH ANNUAL AMERICAN EDUCATION FINANCE ASS'N YEARBOOK 59-75 (1989).

Local Tax Revenues

Generally, once all federal and state moneys have been determined, school boards are responsible for raising the difference by the local effort to support public schools. With the exception of a few states, local boards of education are bound by either statutory or other governmental body directive, such as a formula that determines how much and to what extent the local share may increase over the previous year's budget. In most states a board of education may not unilaterally set the local tax levy without approval from the electorate, town meeting, state agency, or other governmental agency. Most states allow the local levy to be set within strict budgetary parameters as determined by a specific formula set forth by the state legislature. Nearly all local funds that support education are generated through local property taxes. Certain user fees, book rentals, site rentals, and so on may exist, but they support public education to a small extent.[35]

The property tax is stable, it is relatively easy to administer, and it generally taxes wealth. There is an overall statistical relationship between an individual's wealth and an individual's property. All individuals pay property taxes in some form. For the farmer it may serve as a tax on the capital investment; for the renter it is included within the rent payment; for the merchant it is part of the overhead that is ultimately passed on to the consumer in the price of the goods or services.

Frequently, due to state constitutional limitations, the assessed valuation is actually a percentage of the assessed value of the property.[36] The levy is divided by the assessed valuation to produce the rate. Once the rate is determined pursuant to state statute, the rate is applied to the individual assessed value of each parcel of real estate and improvements thereon to determine the individual taxes each property owner must pay.

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[34] It should not be assumed that by simply increasing the overall state aid in relation to local expenditures, greater equity will then result. This phenomena is highly dependant on the specifics of the state aid formula. *See*, R. C. Wood, D. Honeyman, and V. Bryers, *Equity in Indiana School Finance: A Decade of Local Levy Property Tax Restrictions*, 16 J. Educ. Fin. 83-93 (1990).

[35] *See* R. C. Wood, 1986-87 Property Assessment Practices for School Taxation Purposes (2d ed. 1987).

[36] The assessed valuation may be referred to by a number of terms, *e.g.*, the grand list, the total and true cash value, the adjusted assessed value, and so on. For a complete listing of these terms *see*, R. C. Wood, 1986-87 Property Assessment Practices.

Equity

During the 1970s, equity was the preeminent theme in education finance. Under pressure from courts, states reevaluated the formulas used to distribute moneys to local school districts. For the most part, legislatures increased the states' share of the cost of educating elementary and secondary students in an attempt to equalize the burden of financing schools. A variety of formulas emerged that attempted to distribute state funds in order to balance local dependency on the property tax as a source of revenue for school operations. As an overall generalization, school districts with low property values would receive additional fiscal support so that taxpayers were not overburdened in their attempt to fund educational programs.

However, in the 1980s the costs of providing educational programs continued to rise. Many states were confronted with decreased financial resources including a diminished level of support from the federal government and taxation limitations imposed by voters. Unstable economic conditions forced changes in the methods that states utilized to support public education. Those who engage in the process of determining what is equitable in education finance approach the problem from different perspectives. Some individuals argue the need to reduce the tax burden by altering the distribution of state funds, others call for increased state participation as a cost-effective long term investment, while others call for a redefinition of wealth in order to shift the burdens of the cost of education.

In that the responsibility for supporting public education should be equitably distributed throughout a state, several questions which are highly dependent on state data may emerge:

- Are equals receiving equal resources?
- Are unequals receiving unequal resources?
- Does each child have an equal opportunity to acquire the benefits of the educational process regardless of the wealth available to the local school? and
- How much should taxpayers pay?

Ability to Pay and Effort

Certain states use a variety of measures to determine the local ability to pay e.g., combinations of property valuation, income, and sales tax measures. These variables are then manipulated within the education finance formula to balance the local share of the cost of education according to one or some combination of the following:

- The wealth (ability to pay) of the district;
- The effort that local taxpayers agree to support; or
- A combination of the two.

Horizontal and Vertical Equity

As a principle of equity in taxation, horizontal equity is expressed as equal effort exerted by taxpayers with equal abilities to pay. For example, two individuals with the same income and the same value of housing should pay at the same property tax rate and support equivalent property tax burdens. Vertical equity, as a second principle, states that taxpayers with different abilities to pay should exert different efforts in support of tax burdens.

It is equally important to consider equity regarding expenditures per pupil. Concerns for horizontal and vertical equity at the point of taxation are directed at the procedures for generating revenues. States must also try to reasonably balance expenditures such that they are equitable for all pupils being educated under similar circumstances with similar educational abilities i.e., horizontal equity. Likewise, allocations must be made for dissimilar expenditures for special, often disadvantaged populations, operating in different situations i.e., student classifications that are based on vertical weightings. Thus, these expenditures would attempt to be vertically equitable. Horizontal and vertical equity can be monitored. As a state monitors the costs of education in terms of expenditures per pupil, the equity concerns should dominate the process of determining the burden that taxpayers must bear in support of public education.

Equity is a philosophical construct that largely drives distribution formulas used to maintain fiscal and educational fairness. These formulas have evolved through long political processes and attempts to balance the distribution of scarce financial resources within every state. As social, economic, and political events continue to change, education finance policies must be altered in order to assure equity.

CHAPTER 4

EDUCATION FINANCE DISTRIBUTION FORMULAS

Formula Distribution Schemes

Taxation must provide the revenues for public education. If equal opportunity were both a legal and societal goal, then scarce resources must be distributed in an equitable manner. Operationally, the only mechanism available to society to sustain equal educational opportunity is the financial aid distribution formula. Given the inequities of the distribution of wealth, numerous attempts have been made to devise distribution aid formulas to offset the fiscal inequality of school districts. These basic formulas, as described herein, become increasingly complex as they attempt to focus on vertical as well as horizontal equity.

Education finance studies performed during the early 1900s focused attention on several new and important issues: What level of education is appropriate? What share of the costs should be borne by the state? How much control should the state exert over the operation of local schools? And, what is meant by the equalization of educational opportunity?

By the mid-1930s theoreticians such as Cubberley, Mort, Strayer, Haig, and others studied these questions. Their findings indicated that balancing the financial support among all school districts within a state would balance the educational opportunities available to students. In general, the results of these studies indicated the need for the use of formula distribution plans coupled with fair systems of taxation to attain a balance between state and local funds utilized to support public elementary and secondary education.

Gradually, states began to assume a greater share of the costs of operating schools. From 1930 to 1980, the state share in support of public schools throughout the United States increased from 17% to approximately 48%. By 1979, all states except Hawaii used some type of a formula program to determine the exact amount of that share. Today, the distribution plans most frequently used by states include: combinations of flat grants with variations of a foundation program, the percentage or power equalizing program, and the guaranteed yield or guaranteed tax base plan programs.

Although there are many variations of each formula used by states to calculate the state share of the cost of education, the authors classify these formulas as follows:

- Flat Grant, Categorical or Entitlement Programs;
- Full State Support or Funding Programs; and
- Equalization Aid Programs.

A general overview of each of these formulas is discussed. It should be noted that each state operates with a unique set of guidelines and no single explanation of a formula or a plan is appropriate for every situation.

Flat Grant Programs[37]

Flat grants are commonly defined as warrants paid to a local school without concern for the ability of the local patrons to pay for the services funded by the grant. There are two forms that flat grants follow:

- A grant based on some uniform measure of need; that is, dollars per pupil, dollars per mile, or dollars per teacher unit; and
- A grant based on variable or weighted units of need which is adjusted to prescribed local or instructional needs; that is, rural or urban geographical problems, enrollment sizes, additional costs for students with certain exceptionalities, and so on.

By the beginning of the 1900s, states were funding an increased share of the costs of public schools. The plans most frequently used were variations of flat grant plans. By the 1920s, approximately thirty-eight states allocated funds in support of public schools in the form of flat grant formulas. These formulas were primarily enrollment driven in terms of criteria for determining the level of state aid for local school districts. Other variations found included average daily attendance, general enrollment, and school membership, alone or in combination, to determine state financial aid. By 1971, only ten states continued to utilize flat grants as the primary funding mechanism: Arizona, California, Connecticut, Oregon, Arkansas, Delaware, Nebraska, New Mexico, North Carolina, and South Carolina.

Today, various forms of flat grants are used by states to distribute supplemental aid to assist with the costs of several special operations and programs. Included in these special programs are transportation,[38] the excess costs of special education, food services, textbooks, vocational education, and driver's education.

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[37] *See* D. C. THOMPSON, R. C. WOOD, AND D. HONEYMAN, *supra* note 30.

When the flat grant was used as the primary method for distributing state funds, the assumption was that each district deserved a given amount of financial support. However, state policy makers were reluctant and often unable to fund the entire costs of education and additional revenues were needed from local sources. Additionally, these flat grants did not consider the capacity of the local district to support the needed additional revenues.

These grants and payments violated many of the principles of equity and fiscal neutrality, i.e., the wealth of the community should not determine the education of a child. As such, rich districts received the same payment per unit of measure as did poor districts. Rich districts could then raise additional revenue from the local property tax base with minimal tax rates. Poor districts were then forced to impose higher tax rates in support of similar programs or forego such programs at the expense of their students.

The operation of a flat grant is graphically striking as seen in Figure 1 which shows two school districts with different abilities to pay for education. District A has an assessed valuation of $200,000 per pupil, while District B has an assessed valuation of $600,000 per pupil. Assuming that the state's share of the costs in each district were a flat grant of $2,200 per pupil and assuming that the actual costs were $4,000 per pupil, it is clear that each district must generate $1,800 from local tax sources. Under these conditions, several favorable attempts at equality can be seen. First, the districts are equal in the amount of money that must be raised locally. Second, every child has equal merit in that the state uniformly awards $2,200 per pupil to pay for educational services. Third, the level of the flat grant is quite high in that local districts must only raise 45% of the total costs per pupil. Fourth, the districts' tax rates are lower than would be true if the total program costs were locally funded. These conditions provide immediate benefits that relate to both adequacy and equity. Most obvious is that the grant increases available revenues or, alternatively, allows for local tax relief. Additionally, the grant is seen to be highly neutral.

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[38] The definition within transportation is an amount of money per student given a formula based on a variety of variables that are independent of the wealth of the local school district. For a discussion of the Supreme Court determining the equal opportunity issues involving transportation *see*, R. C. Wood, *Kadrmas v. Dickinson Public Schools: A Further Retreat From Equality of Educational Opportunity*, 15 J. EDUC. FIN. 429-436 (1990). *See also*, Ellis v. Chester Upland Sch. Dist., 651 A.2d 616 (Pa. Commw. Ct. 1994). For an examination of fiscal equity of a transportation formula *see*, R. C. Wood, D. Honeyman, and B. Dawson, *The Distribution of Educational Transportation Funds in Indiana: An Examination and Equity Analysis*, 21 PLANNING AND CHANGING 53-62 (1990).

Nonetheless, District A must tax itself at a rate of 9 mills ($1,800 ÷ $200,000= .009), while taxpayers in District B need to pay only 3 mills ($1,800 ÷ $600,000= .003), a direct function of a tax base inequality of 3:1. Thus, the apparent neutrality of a flat grant is misleading in that taxpayers in poor districts pay higher tax rates to fund the same expenditure. If one accepts the view that equity is the aim of state aid, this result is unacceptable. Consequently, a flat grant can actually be disequalizing unless it covers the entire cost of a program. Practically, the latter can never be reached for political and technical reasons.[39] When states use flat grants which do not cover the entire cost of educational programs, the resulting disproportionate effort that poor districts must extend can result in an unfair burden.

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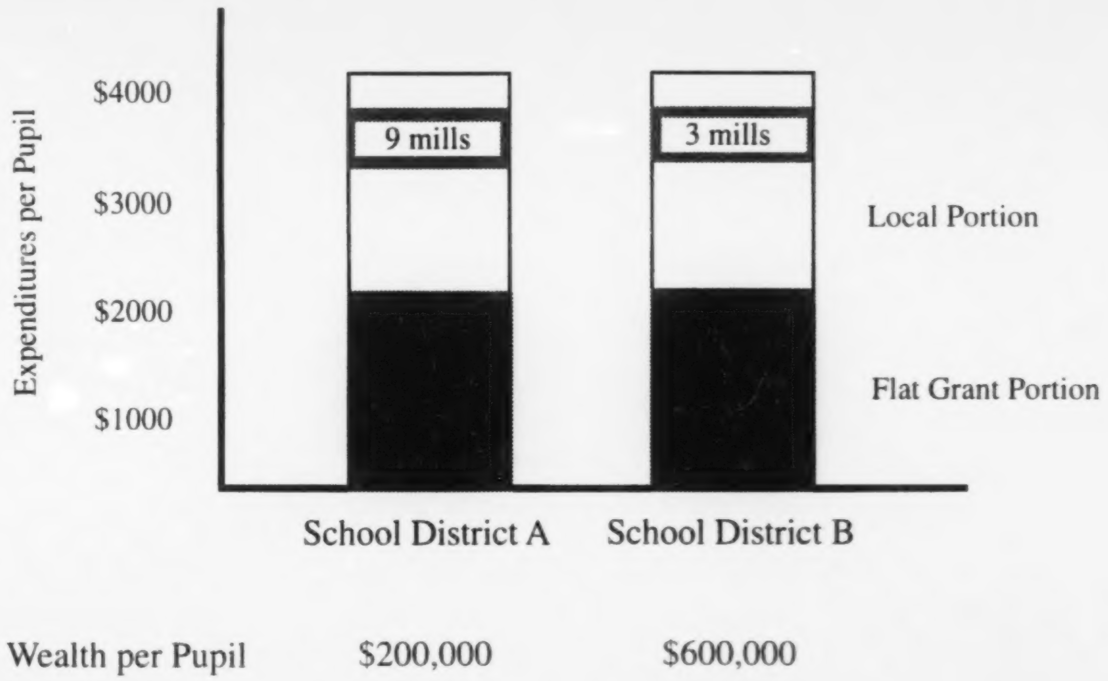
[39] Politically, flat grants were never designed for such sophistication in equity. Technically, if a flat grant were to cover the total program costs, it would become a full state funding scheme as discussed later.

FIGURE 1
GRAPHICAL REPRESENTATION OF THE FLAT GRANT



Equalization Plans

There are many variations of equalization formulas presently in use by states. All operate on the assumption that the state and the local school district must share the costs of operating public schools. However, two philosophical questions may be asked to help explain the way in which the costs and the shares will be decided:

- Does the state set the cost of education throughout the state and the local effort tax rates required to meet some stated minimum cost?; or
- Does the state allow local districts to determine the costs of education and balance the wealth of the local districts, such that the patrons of each district have an equal opportunity to fund their programs?

The reader is cautioned that the discussion and accompanying examples have been simplified for the purposes of clarity. Each state operates with one of these formulas and has modified each formula extensively over the years. State aid formulas have several purposes. Formulas increase the level of revenue to nearly all school districts. The vast majority of school districts directly benefit given the local ability to raise funds in support of public education. State aid formulas also serve the purpose of providing a degree of uniformity of revenue so as to minimize vast differences in the quality of public education.

Formula equalization plans sought to reduce the varying degrees of dependence on the local ability to pay which was thought to impact educational opportunity. State aid plans were designed to increase revenues at the local level while offering greater revenues in those districts with the least ability to assume this burden. Equalization schemes sought to achieve these goals. However, the operationalization of each scheme was technologically different based on the political preferences and economic realities of a given state over the number of years in which a formula matured. Political realities were formidable by requiring resolution to three central policy concerns. These policy questions were largely settled within the political arena based on the fiscal constraints existing within each state:

- Whether the state should set expenditure levels and local tax rates,
- Whether the state should allow each district to set its own costs with corresponding aid, and
- Whether the state should simply set minimum expenditures that could be exceeded by local option.

While equalization schemes vary they tend to fall into the following typology:

TABLE 1
TYPOLOGY OF EQUALIZATION PLANS CATEGORIZED BY DEGREE OF LOCAL AND STATE CONTROL*

Primary Rates Set by the State	Primary Rates Set by Local District
Minimum Foundation Programs	Resource Accessibility Programs *e.g.,* Percentage Equalizing Guaranteed Tax Base Guaranteed Tax Yield Power Equalizing

and

Combination Foundation and Resource Accessibility Programs
e.g.,
Foundation and Guaranteed Tax Base
Foundation and Guaranteed Tax Yield
Foundation and Flat Grant
Guaranteed Tax Yield and Flat Grant
Percentage Equalizing and Flat Grant

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* David C. Thompson, R. Craig Wood, and David S. Honeyman, Fiscal Leadership for Schools: Concepts and Practices, (Longman, 1993).

Minimum Foundation Plans

Minimum foundation plans are based on the school district's ability to pay for a minimum educational program. Early in the formation of minimum foundation plans, Strayer and Haig argued that a foundation formula should reach several goals:

- Educational programs should be based on the wealthiest district,
- A minimum foundation should encourage local initiative,

- The plan should reward efficiency, and
- The plan should make districts fiscally competitive so that differences would reflect local choices rather than the effects of local ability or inability to pay.

State policy makers were attracted to the concept due to the reliance on a minimum level and its allowance for a degree of local control. Additionally, the concept addressed a minimally required base expenditure that could be said to satisfy some quantity of minimum education.

The formula is stated as State Share = Total Costs minus Local Share. The cost of a minimum program is less some legislatively determined local share, leaving the state to fund the difference. Importantly, the initial tax rate and the initial expenditure per pupil are the equality factors, with the state share varying in direct proportion. Mathematically expressed, the foundation formula is:

$$S_i = (\Sigma P_i \times F_{state}) - (Val_i \times r_{state})$$

where:

S_i	is the state aid to the *i*th district;
P_i	the number of students as calculated in the state, (e.g., by ADA, ADM, weighted by FTE,[40] etc., for the *i*th district;
F_{state}	is the foundation dollar per pupil expenditure set by the state;
Val_i	is the assessed valuation for the *i*th district;
r_{state}	is the tax rate set by the local district;

The effect of the foundation formula can be shown mathematically. In the following example (Figure 2), there are three districts with different wealth and enrollment. The minimum foundation concept is that the state has decided that a minimum educational program is satisfied when districts spend $3,600 per pupil. The second requirement is seen in the state's requirement that all districts levy at least 6 mills. Districts A and B each have wealth of $200,000 per pupil, while District C's wealth is $600,000 per pupil, or a ratio of 3:1. Multiplying the 6 mill minimum tax rate against district wealth produces the tax yield in each district, with

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[40] Methods of calculating the number of students have historically varied among the states. Average Daily Attendance (ADA) counts an average of students in attendance. Average Daily Membership (ADM) counts students officially enrolled at some legal point in time. Full Time Equivalency (FTE) counts students for the demand on instructional time–for example, half-day kindergarten counts each student as .5 rather than as a full headcount.

Districts A and B each generating \$1,200 per pupil (\$200,000 x .006= \$1,200), while District B generates \$3,600 per pupil (\$600,000 x .006= \$3,600). This local share is then subtracted from the state minimum expenditure for state aid. Districts A and B will receive \$2,400 per pupil (\$3,600 - \$1,200= \$2,400) in state aid, while District C will receive no state aid (\$3,600 - \$3,600= \$0) due to local wealth. These data are then multiplied by the enrollment to derive total aid. If District A were to have 3,000 pupils, District B were to have 4,000 pupils, and District C were to have 3,000 pupils, the formula in each district would be calculated as follows:

District A S_a =(3,000 pupils x \$3,600) - (6 mills x 3,000 pupils x \$200,000)
= \$10,800,000 - \$3,600,000
= \$7,200,000 or \$2,400 per pupil

District B S_b =(4,000 pupils x \$3,600) - (6 mills x 4,000 pupils x \$200,000)
= \$14,400,000 - \$4,800,000
= \$9,600,000 or \$2,400 per pupil

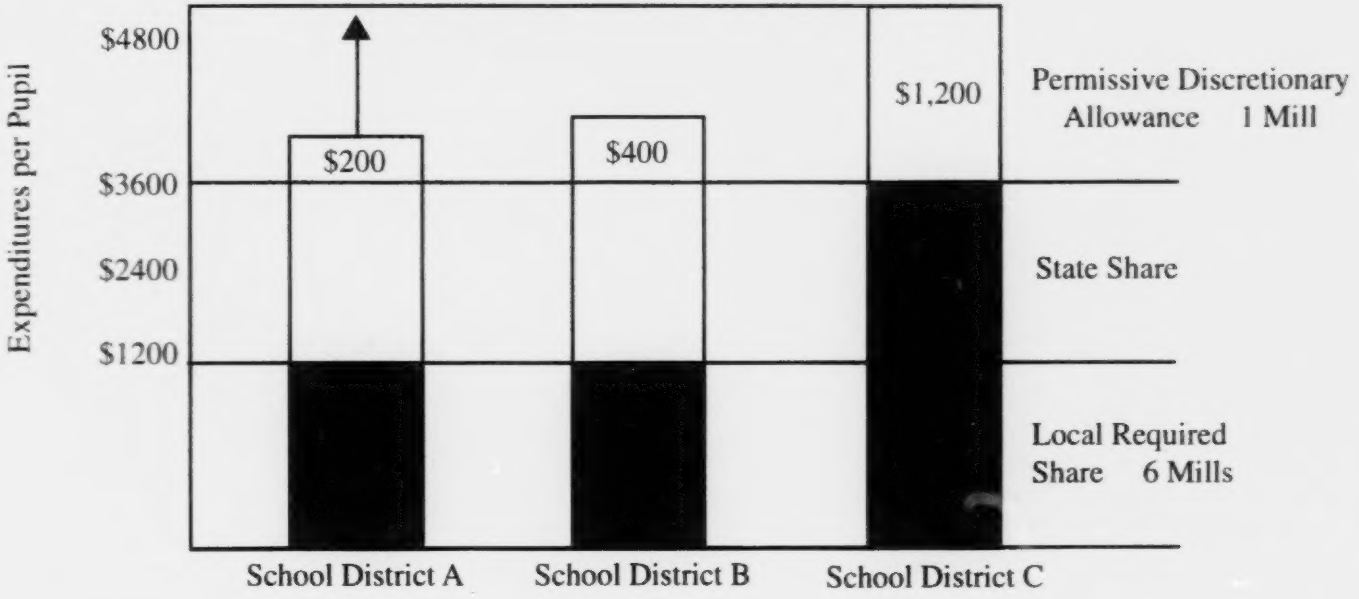
District C S_c = (3,000 pupils x \$3,600) - (6 mills x 3,000 pupils x \$600,000)
= \$10,800,000 - \$10,800,000
= \$ 0 or \$ 0 per pupil

When school districts voluntarily exceed minimum standards, certain inequality issues may be created. In this example, if the state permitted local discretionary millage, District C could generate additional funds with lower tax effort because each additional mill generates \$600 per pupil (\$600,000 x .001), compared to only \$200 per pupil in either District A or District B. A basic foundation formula does not equalize above the minimum tax rate. Second, if voters in poorer districts refused to approve additional millage, then that district must spend less. Third, even if poor districts approved additional tax effort, spending would still be less because the yield per mill above the minimum is not equalized.

These inherent weaknesses of foundation formulas are reflected in Figure 2. The example shows that the basic foundation concept works well up to a point when it becomes dysfunctional in its original equalization aim. The formula works well in the lower portions of the foundation amount, with the other districts receiving aid to equalize local tax base inadequacy. In the upper third, however, discretionary millage allows

District C to spend at a ratio of 3:1 for each additional mill. The problem is perplexing. If the state were to equalize local leeway, the scheme would no longer be a minimum foundation. If it were to fail to equalize discretionary millage, it restores the inequality it first sought to eliminate. If the state were not to permit discretionary millage, the minimum concept is again thwarted. The basic fact is that any unaided discretionary millage is disequalizing, while minimum intent is violated if local leeway were denied. The only other option is to limit the amount of discretionary millage, but it is clear that this is compromising and a depressant to the lighthouse concept.

FIGURE 2
GRAPHICAL REPRESENTATION OF FOUNDATION PROGRAM SHOWING THE EFFECT OF DISCRETIONARY MILLAGE ON PER PUPIL EXPENDITURES



Wealth per Pupil	$200,000	$200,000	$600,000
Required Millage	6 mills	6 mills	6 mills
Approved Discretionary Millage	1 mill	2 mill	2 mill

Despite its inherent limitations, the foundation plan has been the single most popular equalization formula. This acceptance is no doubt due to a variety of political and economic realities.[41]

Resource Accessibility Programs

Resource accessibility and foundation programs seek to equalize education by offering aid in inverse relation to the ability to pay. The plans are fundamentally different. The foundation program follows a less aggressive minimum provision philosophy, while resource accessibility programs focus on a more aggressive equal access philosophy or even an equal total provision philosophy.[42] In addition, resource accessibility programs are much more heavily vested in local decision making. Resource accessibility plans dictate that the state share in educational costs at a level determined by the local district, and also focuses more intensively on the end-opportunity instead of uniform effort or program.

Resource accessibility programs require equal access to resources, rather than initially uniform levels of funding. Resource accessibility formulas are concerned with students having equal access to resources and are less philosophically concerned about whether resources are initially uniform or even equal, as long as the opportunity to access the same moneys was available. The vehicles include various Percentage Equalizing (PE) plans. These formulas have been further refined to include newer variations known as Guaranteed Tax Base (GTB), Guaranteed Tax Yield (GTY), and District Power Equalization (DPE).

Generally, percentage equalization concepts allow school districts to determine a cost of education that reflect local preferences. The state decides the support level to be applied equally to all districts, generally expressed as a percentage of costs to be paid in the average district after local ability to pay is subtracted. Unlike the foundation, state aid is thus variable on two factors. The first factor still varies aid on the basis of wealth, but the second factor causes aid to vary based on local decisions with state partnership guaranteed.

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[41] Modification of minimum foundation plans are frequent. Generally, the plans may be equalized to a predetermined level. The alternative is to cap the discretionary millage which is designed to apply to a certain segment, i.e., the wealthiest school districts. Such limitations are politically attractive in that there are no state moneys involved. Generally, sliding scales are utilized; i.e., for each additional mill the degree of equalization is decreased. Thus, such plans can never be fully equalized. If a state were to fully equalize each discretionary mill, the state would have adopted a resource equalization scheme.

[42] This discussion can be found in J. GUTHRIE, W. GARMS, AND L. PIERCE. SCHOOL FINANCE AND EDUCATION POLICY: ENHANCING EDUCATIONAL EFFICIENCY, EQUALITY, AND CHOICE. 132-133 (2d. ed. 1988).

These new resource accessibility formulas were designed to distribute aid as if the tax base per pupil in every district were identical. The vehicles became known as Guaranteed Tax Base and Guaranteed Tax Yield formulas, with a special variation also known as District Power Equalization. The Guaranteed Tax Base is a plan that attempts to create the same tax base wealth per pupil throughout a given state. In finding the average assessed valuation per pupil for the state as a whole, the state would determine a tax base amount to be equally guaranteed to every district. Under this condition, all students are instantly equal. The features of the percentage equalization formula would remain, however, in that local districts would still make the decisions concerning local expenditures and would also set the tax rate. When that decision is made, the district would multiply the local tax rate against the guaranteed tax base, while the state would be required to make up any difference. For example, if two districts established the same tax rate, they would be guaranteed the same expenditure per pupil. The GTB thus guarantees taxpayer equity such that each school district in the state has an equivalent capacity to generate revenue. Mathematically, the Guaranteed Tax Base is expressed as State Share= Local Tax Rate x (GTB - Local Tax Base).

The Guaranteed Tax Yield formula sets a tax yield level for all property in the state. The state may set the guaranteed tax yield so that the formula provides zero aid to the wealthiest district in order to avoid recapture. Another policy option allows for setting the tax yield above the wealthiest district in order to provide aid to every school district. The last policy option is to set the yield below the wealthiest district whereby excess revenue is recaptured. Politically, only the second option is generally available. Regardless of the option, however, the formula is solved so that poor districts receive the same revenue per pupil as the wealthiest district using the same tax rate. The Guaranteed Tax Yield formula is mathematically expressed as State Share= $(\text{Wealth}_W \times \text{Tax Rate}_W) - (\text{Wealth}_i \times \text{Tax Rate}_i)$. In solving the formula, the revenue per pupil generated in the ith district (wealth per pupil of the ith district times its tax rate) is subtracted from the revenue per pupil generated in the wealthiest district (wealth per pupil of the wealthiest district W times its tax rate), with the difference yielding the state aid per pupil.

The formula for the percentage equalization, guaranteed tax base, and guaranteed tax yield is identical and is expressed as:

State Share = Total Costs x Local Share Ratio

$$S_i = (\Sigma P_i)(Exp_i) - (1-(C \times Adj.Val_i))$$

where:

S_i	is the state aid to the *i*th district,
P_i	is the number of students as calculated in the state, ADA, ADM, weighted by FTE, etc., for the *i*th district;
Exp_i	is the dollar per pupil expenditure set by the *i*th district;
C	is the state share percentage factor.
$Adj.Val_i$	is the ratio of assessed valuation per pupil for the *i*th district compared to that of the average assessed valuation for all districts;

Solving the equation requires several steps. First, the total number of pupils(P_i) is multiplied by the per pupil dollar expenditure level (Exp_i) set by the district. To solve for the state share, (S_i), the far right set of parentheses must be known wherein the adjusted valuation[43] of the school district is multiplied by the state constant (C) factor and subtracted from 1. S_i is then the sum of pupils multiplied by the district expenditure per pupil minus the product of 1 minus the constant multiplied against the assessed valuation per pupil of the district. From the state perspective, the value of C in a given year can be leveled up or down to control costs. The same three illustrative school districts would each calculate:

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[43] Districts do not provide this figure. This is the value of property in the district adjusted so that all district property is valued at a common assessment level throughout the state compared to the average adjusted value of all similar property for each district in the state, i.e., the ratio of the tax value of local property compared to the average taxable value of all property for all districts in the state.

Average wealth per pupil of the state: \$333,333
State share factor (C): 0.5

District A

$$\begin{aligned} S_a &= (3{,}000 \text{ pupils} \times \$3{,}600) \times (1-(0.5 \times 200{,}000 \div 333{,}333) \\ &= \$10{,}800{,}000 \times 1-.3 \\ &= \$7{,}560{,}000 \text{ or } \$2{,}520 \text{ per pupil} \end{aligned}$$

District B

$$\begin{aligned} S_b &= (4{,}000 \text{ pupils} \times \$4{,}000) \times (1-(0.5 \times \$200{,}000 \div 333{,}333)) \\ &= \$16{,}000{,}000 \times 1-.3 \\ &= \$11{,}200{,}000 \text{ or } \$2{,}800 \text{ per pupil} \end{aligned}$$

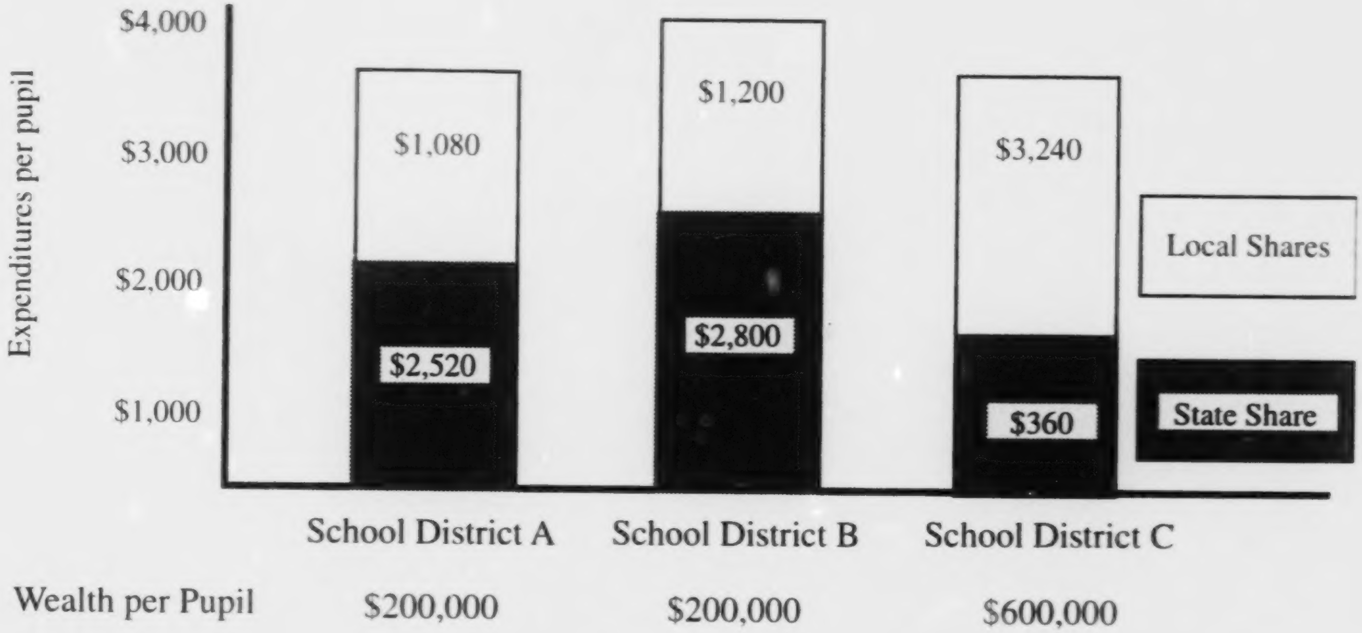
District C

$$\begin{aligned} S_c &= (3{,}000 \text{ pupils} \times \$3{,}600) \times (1-(0.5 \times \$600{,}000 \div \$333{,}333)) \\ &= \$10{,}800{,}000 \times 1-.9 \\ &= \$1{,}080{,}000 \text{ or } \$360 \text{ per pupil} \end{aligned}$$

Aid to these districts under a resource accessibility formula is different than when a foundation formula is applied. Districts A and C have chosen to spend the same \$3,600, but aid is now different. Under a foundation aid formula, District A received aid of \$2,400 per pupil while wealthier District C received nothing. Factoring in a more sensitive wealth variable and setting the state share at 50 % adjusted for wealth, however, changes District A aid to \$2,520 per pupil, and supplies District C with aid of \$360 per pupil. In contrast, District B has chosen to set its expenditure even higher at \$4,000. Districts A and B have equal wealth, although higher budgets per pupil will demand higher aid, but a higher tax rate has been chosen. Inasmuch that all ratios are proportional, this is acceptable because the amount of state aid is adjusted according to the relative wealth of each district, with wealthy districts receiving less state aid than poor districts for equal tax effort.

The operation of the resource equalization formula is graphically visible in Figure 3. Districts A and B have the same wealth, but District B has approved a higher expenditure level of \$4,000. The state thus pays a higher share in support of District B than it does for District A, but taxpayers in District B pay approximately 11% more local taxes as a result (\$1,200 compared to \$1,080). Under these conditions, however, both strengths and weaknesses become evident. The state has shifted minimum program definition to local districts. However, the state faces a potential of not being able to meet its share if the bulk of local districts were to set very high expenditure levels.

FIGURE 3
GRAPHICAL REPRESENTATION OF PERCENTAGE EQUALIZING PROGRAM FOR THREE SCHOOL DISTRICTS SHOWING PER PUPIL EXPENDITURES AND RESULTING LOCAL SHARE AMOUNTS



District Power Equalization formulas by design embrace the concept of recapture. Power equalization plans require that every district with an assessed valuation greater than the state's guaranteed valuation per pupil (or some predetermined valuation) must pay back the difference to the state. A few states have adopted resource accessibility plans. No adoption has been pure in form.

Combination Programs

Due to the inherent deficiencies of pure formulas, policy makers have combined the principles of foundation aid and equalization aid by merging one or more types of formulas in efforts to secure the benefits of each. The intent, of course, is that the strengths of one plan may help offset the weaknesses of another. Certain states have mixed flat grants or foundations with some form of percentage equalization. As a general rule, one scheme provides 'base' aid, while the other formula is added on to meet another policy goal.

Multi-tier formulas have appeared of late as the deficiencies of 'pure' formulas have been revealed. A common combination calls for equalization above a foundation for several reasons. The minimum provision continues to offer attractiveness despite the advent of technically superior formulas, particularly in the context of assuring initially flat expenditures and tax rates, more uniform program quality, and local discretionary leeway. The major flaw of a foundation plan is corrected by overlaying equalization wherein local option preserves its strength by guaranteeing equal revenues for equal effort if the choice were exercised. Operationally, as well as politically, there is great attractiveness to combining the strengths of certain equalization schemes. However, great care must be exercised not to combine the less desirable features of various plans resulting in a greatly inferior overall plan.

Full State Funding Plans

Full state funding as a public policy has always possessed certain attractive features for state policy makers. The concept places all the resources of the state in reach of every child, generally by requiring a statewide tax on the various forms of wealth within a state. The concept assumes that the available fiscal resources are initially apportioned equally to every child without regard to location or wealth. There can be no local spending leeway because localities no longer factor into a statewide scheme. Revenue belongs to the state. There are no longer any local moneys for education. These features make the concept significantly different from foundation plans and are counter to local preferences.

Only Hawaii follows the classic full state funding model. Hawaii does not utilize a property tax in support of public elementary and secondary education. Additionally, it lacks traditional local school districts. A few other states qualify as almost full state funded, e.g., California and Florida where local property tax limitations have created de facto full state funding. For example, the Florida legislature sets a range of approved local property tax rates and also determines allowable costs per pupil, with the state funding the difference. Since almost every district exercises the maximum millage, Florida effectively has full state funding.

Despite the fact that full state funding represents a technically correct mechanism for achieving a high level of fiscal equity, the political realities of shifting decision making to the state has effectively prevented adoption of full state funding in nearly all instances. It is also important to note that full state funding is the only plan that assures horizontal equity among all children of the state. The technology of full state funding has always exceeded its political acceptability. Additionally, full state funding opponents have always presented powerful arguments regarding the diminished involvement of local decision makers within the local school districts.[44]

Overview of Distribution Formulas

The financing of public education in the United States is a huge and complex industry. The allocation and determination of the amount of local and state revenues to be raised, shared, and expended are laden with value judgments and complexity. The authors have attempted in Table 2 to display the most common mechanisms for the distribution of state revenues to local educational agencies. This state distribution then determines, or at least highly influences, the amount of local taxes used to support local education.

Public education finance is a dynamic and ever changing function of every state and the value systems of society. Public education finance will continue to change, and important refinements and modifications will occur constantly. The goals of financing public education are such that taxpayers should be treated differently based on their ability to support public education.

Concurrent with this goal is the concept that where a child lives, i.e., the community's lack of wealth, should not determine the quality and quantity of the educational programs offered by local public schools. By providing this equal educational opportunity, society will benefit and individuals will achieve their fullest potential.

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[44] For a discussion of full state funding as it applies to Hawaii, *see, e.g.*, J. A. Thompson, *Notes on the Centralization of the Funding and Governance of Education in Hawaii*, 17 J. EDUC. FIN. 286-302 (1992).

Table 2 reflects a classification scheme of present day formulas and where they are utilized.

TABLE 2
CLASSIFICATIONS OF FORMULAS
USED TO DETERMINE STATE AID 1991[45]

ALABAMA	MODIFIED FOUNDATION
ALASKA	FOUNDATION
ARIZONA	FOUNDATION
ARKANSAS	FOUNDATION: TWO-TIERED
CALIFORNIA	FOUNDATION W/FLAT GRANT
COLORADO	MODIFIED FOUNDATION
CONNECTICUT	PERCENTAGE EQUALIZING
DELAWARE	FLAT GRANT W/EQUALIZATION
FLORIDA	FOUNDATION
GEORGIA	FOUNDATION W/GTB
HAWAII	FULL STATE FUNDING
IDAHO	MODIFIED FOUNDATION
ILLINOIS	MODIFIED FOUNDATION/GTBW/ FLAT GRANT
INDIANA	FOUNDATION W/FLAT GRANT
IOWA	FOUNDATION W/FLAT GRANT
KANSAS	PERCENTAGE EQUALIZING
KENTUCKY	FOUNDATION W/GTB
LOUISIANA	FOUNDATION
MAINE	MODIFIED FOUNDATION
MARYLAND	FOUNDATION W/FLAT GRANT
MASSACHUSETTS	PERCENTAGE EQUALIZING
MICHIGAN	GTB W/FLAT GRANT
MINNESOTA	FOUNDATION
MISSISSIPPI	FOUNDATION
MISSOURI	FOUNDATION W/GTB AND FLAT GRANT
MONTANA	FOUNDATION W/GTB
NEBRASKA	FOUNDATION
NEVADA	FOUNDATION
NEWHAMPSHIRE	FOUNDATION
NEW JERSEY	FOUNDATION

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[45] Adapted from D. C. Thompson, R. C. Wood, and D. Honeyman, *supra* note 30.

NEW MEXICO	FOUNDATION, NEAR FULL FUNDING
NEW YORK	PERCENTAGE EQUALIZING W/FLAT GRANT
NORTH CAROLINA	FLAT GRANT
NORTH DAKOTA	FOUNDATION
OHIO	FOUNDATION
OKLAHOMA	FOUNDATION W/EQUALIZATION
OREGON	FOUNDATION
PENNSYLVANIA	PERCENTAGE EQUALIZING
RHODE ISLAND	PERCENTAGE EQUALIZING
SOUTH CAROLINA	FOUNDATION
SOUTH DAKOTA	FOUNDATION
TENNESSEE	FOUNDATION
TEXAS	FOUNDATION W/GUARANTEED YIELD
UTAH	FOUNDATION
VERMONT	FOUNDATION W/FLAT GRANT
VIRGINIA	FOUNDATION
WASHINGTON	FULL STATE FUNDING
WEST VIRGINIA	FOUNDATION
WISCONSIN	GTB W/TWO-TIERS
WYOMING	FOUNDATION

Formula Adjustments

To this point in the discussion the assumption has been that all children are equal. Obviously, all children are of equal worth. The first premise of state aid distribution is that horizontal equity must be present if an aid scheme merits adoption. However, many state aid plans have only imperfectly provided horizontal equity. It should not be assumed that horizontal equity is the sufficient end of formula design because it is obvious that children are not equal in terms of their economic, social, or physical circumstances. Thus, it is necessary to adjust aid formulas to consider the differences among children in the belief that elements of verticality will better lead to ultimate horizontal equity.

The majority of the professional literature in education finance is concerned in some way with improving vertical equity and testing the means by which equity can be measured. These adjustments are generally those of a need equalization and/or cost equalization. The traditional view reflects that need equalization most closely aligns with vertical equity adjustments or formula add-ons for programs, while cost equalization focuses on vertical adjustments for differences such as economies of scale and perceived market baskets.

Need Equalization

If all children in a school district were exactly equal in economic, social, physical and intellectual status, state aid formulas would not need to be concerned with vertical adjustment. Of particular merit in need equalization is the extreme disadvantage many children face as a result of special handicapping conditions that affect their ability to learn. States have provided additional resources in an attempt to offer these children equal footing in a competitive society. As a consequence, there have been special efforts to concentrate additional resources on three need areas of compensatory education, bilingual education, and special education.

The level of fiscal support for compensatory education varies greatly among the states. There has been common consensus that poverty is the best indicator of the need for compensatory services. These formulas have sought to provide extra aid on the assumption that these children can benefit from more intensive services.

The concept of pupil weighting has been popular in all of the various vertical adjustments. Weighting is the determination of the amount of additional funds necessary to provide a special service. Weighting schemes are based on a regular education child at a weight of 1.0 wherein the cost of a child with no special needs is defined as the uniform expenditure level for all such children. The cost of a special needs child can then be calculated as some amount greater than 1.0 where the weight will be the program's cost divided by the number of children served.

The common alternative to pupil weighting has been a system of categorical aids. These moneys are used for a special purpose such as compensatory education. Categorical aids are distinguished from weights generally by separate fund accounting and a direct relation to actual program costs. Table 3 broadly displays the compensatory education plans in place in those states that have chosen to accept special responsibility for this vertical equity question. These data illustrate a wide variation in the approaches of states.

TABLE 3
STATE METHODS OF AIDING
COMPENSATORY EDUCATION[a]

CALIFORNIA	COSTS IN EXCESS OF REVENUE LIMIT
COLORADO	FLAT GRANT
CONNECTICUT	WEIGHTED
FLORIDA	FLAT GRANT
GEORGIA	WEIGHTED
HAWAII	FULL FUNDING

ILLINOIS	WEIGHTED
LOUISIANA	FLAT GRANT
MARYLAND	WEIGHTED
MASSACHUSETTS	WEIGHTED
MICHIGAN	VARIABLE GRANT
MINNESOTA	WEIGHTED
MISSOURI	WEIGHTED
NEBRASKA	WEIGHTED
NEW JERSEY	WEIGHTED
NEW YORK	WEIGHTED
NORTH CAROLINA	VARIABLE GRANT
OHIO	VARIABLE GRANT
OKLAHOMA	WEIGHTED
OREGON	SPECIAL GRANT ONLY
PENNSYLVANIA	VARIABLE GRANT
RHODE ISLAND	FLAT GRANT
SOUTH CAROLINA	WEIGHTED
TEXAS	WEIGHTED
UTAH	FLAT GRANT
VERMONT	WEIGHTED
VIRGINIA	FLAT GRANT
WASHINGTON	FLAT GRANT

[a] This table is adapted from DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES, (Longman, 1993).

Special Education.

Vertical formula adjustments for the purpose of equalizing needs are most apparent in special education provisions. Special education has existed in many states for decades, as states voluntarily provided some services to children with special physical or intellectual needs that could not be effectively served in the regular classroom. As a result of case law[46] and federal laws[47] involving the right to an appropriate education, a wide variety of special services have become an integral part of all state aid schemes.

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[46] *See, e.g.*, Pennsylvania Ass'n of Retarded Citizens (PARC) v. Commonwealth of Pa., 343 F. Supp. 279 (E.D. Pa. 1972) (consent decree); *see also* Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972) which moved the right to education beyond mentally retarded children to include a broad range of handicapped children and began the practice of forbidding exclusion of handicapped children from regular school assignment unless provided with due process.

[47] Education for All Handicapped Children Act (EHA), P.L. 94-142.

As a result of the attention to special education, states have developed relatively elaborate funding mechanisms. Weighting schemes operate as described earlier, wherein each handicapping condition is usually examined to track historic cost data in order to calculate a weight above the regular education child. Excess cost reimbursement is often designed to develop similar cost data, from which states either pay such costs or reimburse a percentage of costs. A third alternative is to calculate the costs of each instructional organization and to reimburse part or all of such costs to districts. Table 5 broadly defines state plans for financing special education.

TABLE 4

STATE METHODS OF AIDING SPECIAL EDUCATION[a]

ALABAMA	INSTRUCTIONAL UNIT
ALASKA	INSTRUCTIONAL UNIT
ARIZONA	WEIGHTED
ARKANSAS	WEIGHTED
CALIFORNIA	INSTRUCTIONAL UNIT
COLORADO	EXCESS COST
CONNECTICUT	PERCENTAGE REIMBURSEMENT
DELAWARE	WEIGHTED
FLORIDA	WEIGHTED
GEORGIA	WEIGHTED
HAWAII	FULL FUNDING
IDAHO	COMBINATION
ILLINOIS	COMBINATION
INDIANA	WEIGHTED
IOWA	WEIGHTED
KANSAS	INSTRUCTIONAL UNIT
KENTUCKY	INSTRUCTIONAL UNIT
LOUISIANA	INSTRUCTIONAL UNIT
MAINE	PERCENTAGE REIMBURSEMENT
MARYLAND	EXCESS COST
MASSACHUSETTS	WEIGHTED
MICHIGAN	PERCENTAGE REIMBURSEMENT
MINNESOTA	PERCENTAGE REIMBURSEMENT
MISSISSIPPI	INSTRUCTIONAL UNIT
MISSOURI	INSTRUCTIONAL UNIT

MONTANA	PERCENTAGE REIMBURSEMENT
NEBRASKA	WEIGHTED
NEVADA	FLAT GRANT
NEW HAMPSHIRE	WEIGHTED
NEW JERSEY	WEIGHTED
NEW MEXICO	WEIGHTED
NEW YORK	COMBINATION
NORTH CAROLINA	FLAT GRANT
NORTH DAKOTA	EXCESS COST
OHIO	COMBINATION
OKLAHOMA	WEIGHTED
OREGON	EXCESS COST
PENNSYLVANIA	EXCESS COST
RHODE ISLAND	EXCESS COST
SOUTH CAROLINA	WEIGHTED
SOUTH DAKOTA	PERCENTAGE REIMBURSEMENT
TENNESSEE	WEIGHTED
TEXAS	WEIGHTED
UTAH	WEIGHTED
VERMONT	COMBINATION
VIRGINIA	WEIGHTED
WASHINGTON	FLAT GRANT
WEST VIRGINIA	COMBINATION
WISCONSIN	PERCENTAGE REIMBURSEMENT
WYOMING	PERCENTAGE REIMBURSEMENT

[a] This table is adapted from DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES, (Longman, 1993).

Cost Equalization

Several states attempt to adjust for additional differences that may result in inequality among students. These efforts generally focus on differences in costs that occur among school districts as a consequence of economies of scale. The other common cost equalization factor considers market baskets, wherein districts are analogous to consumers in a marketplace of goods and services that may be more or less expensive according to geographic location.[48] The adjustments are largely based on a series of assumptions and are generally absent sound empirical evidence to support the formulas that are in place in many states.[49]

Many states have enacted vertical formula adjustments. These structures are cost equalization strategies, although it can be seen that overlap occurs. A summary of major cost equalization plans is seen in Table 5.

TABLE 5
COST EQUALIZATION SCHEMES[a]

State	Density/SparsityEnroll.	Decline/Increase	Grade Level
Alabama		√	√
Alaska	√		√
Arizona	√	√	√
Arkansas			
California	√	√	√
Colorado	√	√	√
Connecticut	√		
Delaware			√
Florida	√	√	√
Georgia	√	√	√
Hawaii			
Idaho	√	√	√
Illinois			√
Indiana		√	√
Iowa	√	√	
Kansas	√	√	
Kentucky	√	√	√
Louisiana	√		
Maine	√	√	√
Maryland			√
Massachusetts	√		√
Michigan			
Minnesota	√		√
Mississippi			
Missouri			√
Montana	√		√

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[48] *See, e.g.*, J. M. O'Loughlin, R. C. Wood, and D. Honeyman, A Study of the Effects of the Sparsity Supplement on the Equity of the Florida Education Finance Program (Paper No. 5,1992).

[49] R. C. Wood, D. C. Thompson, D. Honeyman, and M. D. Miller, Funding Public Education in Montana Based on the Concept of Cost of Living Indices in Montana Rural Educ. Ass'n v. State, Case No. BDV-91-2065, Report to the Attorney General of the State of Montana (Wood, Thompson & Associates, Inc. 1992).

State	Density/SparsityEnroll	Decline/Increase	Grade Level
Nebraska	√	√	√
Nevada	√	√	√
New Hampshire			√
New Jersey			√
New Mexico	√	√	√
New York		√	√
North Carolina	√		√
North Dakota	√		√
Ohio	√	√	
Oklahoma	√	√	√
Oregon	√	√	√
Pennsylvania	√		√
Rhode Island			
South Carolina			√
South Dakota	√		
Tennessee			√
Texas	√		
Utah	√		
Vermont		√	√
Virginia			
Washington	√	√	√
West Virginia			
Wisconsin			
Wyoming	√	√	√

[a] This table is adapted from David C. Thompson, R. Craig Wood, and David S. Honeyman, Fiscal Leadership for Schools: Concepts and Practices, (Longman, 1993).

Summary of State Aid Formulas

The state responsibility for education creates a special obligation on the part of states to assure equal educational opportunity. That responsibility has resulted in increasingly sophisticated aid mechanisms that have grown to encompass horizontal and vertical equity. Progress toward more equitable aid schemes has been slowed at times by politics seeking to resist the costs of improvement, but in other instances progress has been accelerated because of the political benefit to be gained from advocating such public investments. While no state has adopted a perfect aid scheme, there has been overall genuine improvement since the early days of this century.

CHAPTER 5

Measuring Education Finance Equity

Measuring Formula Equity

Absolute fiscal equality will not automatically result in equal quality of education. It must be noted that the nature of education finance is highly state-specific. Different aid mechanisms perform variably under equity examinations. Although one can suggest various options, the most realistic option is to closely scrutinize funding formulas for the purpose of making continual equity adjustments.

Measurement of equity is focused along three dimensions that relate to horizontal and vertical equity. Vertical equity is so extraordinarily complex that agreement concerning measurement or achievement is not assured, and its costs are often thought to be prohibitive. Further, vertical equity may presume a focus on educational outcomes among unequal populations–a topic for which the technology for accurate measurement has not been fully developed.[50] The bulk of equity measurement has occurred in horizontal generalities about state aid schemes along the three dimensions of resource accessibility, wealth neutrality, and tax yield. The equity performance of any state aid formula may be tested on these dimensions using a set of common statistical tools.[51]

Resource Accessibility[52]

Resource accessibility is primarily concerned with determining whether all students have equal access to a given resource pool. Reality, however, suggests the unlikelihood of a smooth wealth distribution. The task of determining resource accessibility is one of measuring degrees of noncompliance. In most states, this means comparing the level of resources among districts with a common set of statistical tools in relation to the relative achievement of equity among all districts of a given state.

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[50] The measurement of vertical equity is beyond the scope of this text. Other more detailed resources are available; *see, e.g.*, R. Berne and L. Stiefel, The Measurement of Equity in School Finance: Conceptual, Methodological, and Empirical Dimensions (1984).

[51] The statistical tools presented should not be presumed to be a complete list as an introduction to the concept of measurement is the intent. Further, the complexity of several advanced statistical treatments are not presented. The intent of the authors is to simply present an introductory analysis.

[52] This discussion of resource accessibility is adapted from D. C. Thompson, R. C. Wood, and D. Honeyman, *supra* note 30. *See also* D. C. Thompson, R. C. Wood, D. Honeyman, and M. D. Miller, "Resource Accessibility, Wealth Neutrality, and Tax Yield in Montana," Educ. Considerations, Spring, 1994, 4-17.

Several measures of equity are utilized to evaluate resource accessibility, including: the mean, range, restricted range, federal range ratio, standard deviation, coefficient of variation, and variance. These statistical tests are usually applied, by group, to a number of variables that represent items such as budgets, expenditures, wealth, budget surplus, and tax millage for each district in a distribution. The groups in these analyses can be selected to represent any number of comparisons. For example, an analysis might examine all districts or only large districts or small districts. Similarly, the analysis might select groups of large and small districts for specific comparison purposes.

Mean

Generally, the mean is the first observation in considering resource accessibility. It is a measure of the central tendency of the distribution of observations, i.e., the mean represents the average value in the distribution of a variable. The mean takes into account all the observations in the distribution. The mean is calculated by the formula, $(\sum X_i \div N)$ where $\sum$ is the sum of all districts, X_i is the value of a given variable in district i, and N is the number of districts. Solving this formula yields a single number for comparison purposes. For example, if the sum of wealth of all districts in a state were found and divided by the number of districts, the mean wealth would be known. School districts then can be compared to the mean for a crude estimation of variation. While the mean alone does not yield evidence concerning resource accessibility, it does assess wealth variation due to wide differences from the mean unredressed by the state aid formula. Thus, this finding could suggest inequity. Often, it is expressed as the mean differences in per pupil dollar amounts.

Range

The range is the difference between the highest and lowest observations in a distribution. The smaller the value of the range, the smaller the variation in the distribution of a variable; likewise, the smaller the variation, the better the equity of the distribution. The range is found by the formula (Highest X_i - Lowest X_i) where X_i is the variable considered in district i. Solving the formula yields a single number for the entire distribution. The usefulness of the range is limited because it is based on only two values, does not show patterns of variation, and is not sensitive to changes in the distribution. Yet, it is a useful tool for raw wealth measurement in that a wide range unredressed by the aid formula could suggest inequity.

Restricted Range

The restricted range is defined as the difference between the observation at the 95th percentile of the distribution and the 5th percentile. It eliminates the effect of extreme values that can misrepresent a distribution. The difference is found in that the restricted range eliminates all values below the 5th percentile and above the 95th percentile. The restricted range is calculated by the formula (Xi at 95th percentile - Xi at 5th percentile) where Xi is the variable considered in district i. Solving this formula yields a single number for the distribution. A very different picture is thus obtained in which extremely wealthy and poor districts at the top 5% and bottom 5% of the state may distort the total picture. As the restricted range decreases, equity increases. The restricted range is helpful by reducing the distortion of a few extreme school districts.

Federal Range Ratio

The federal range ratio is the restricted range divided by the revenue per pupil per district at the 5th percentile. The federal range ratio is calculated as (Restricted Range $\div$ Xi at 5th percentile) where Xi is the revenue per pupil in district i. Solving the formula yields a value expressed as a ratio wherein the smaller the value, the less variation or inequity in distribution. This number has utility primarily as an alternative expression of relative equity achievement and is subject to the same uses as the restricted range due to the fact that it is based on that measure.

Variance

The variance is defined as the average of the squared deviations from the mean as calculated by the formula $(\Sigma Pi\,(Xp - Xi)^2 \div \Sigma Pi)$ where Σ is the sum of pupils in all districts, Pi is the number of students in district i, Xp is the mean of some tested variable for all pupils, and Xi is the same variable in district i. When the results of the formula are obtained, the smaller the variance, the smaller the variation in the distribution of a given variable–hence, greater equity. Although the variance has no value in descriptive statistics, it is highly important in inferential analysis in that it permits testing for significant differences between groups. For example, one party in an education finance lawsuit might seek to test if mean revenues of plaintiff and nonplaintiff districts were statistically different based on some legitimate criterion such as district wealth variables. Under these conditions, analysis of variance could be used to infer various properties to the state aid scheme.

Standard Deviation

The standard deviation is the square root of the variance as calculated by the formula $(\sqrt{(\Sigma Pi\,(Xp - Xi)^2 \div \Sigma Pi)})$. The smaller the calculated value, the smaller the variation in the distribution of revenues per pupil, i.e., the greater the equity. The standard deviation is based on assumptions concerning normal distributions in a bell curve and may thus be instructive concerning how an education finance formula affects various groups. For example, examination of a state aid formula might reveal that medium size school districts received less revenue than all other districts and that these revenues were more than a standard deviation below the mean. For example, under these conditions, additional questions could arise concerning whether these districts are underfunded. The advantage of the standard deviation is that all observations are included in the calculation and the units of measurement are in the original scale. However, it is sensitive to outliers that could skew the distribution.

Coefficient of Variation

This measure is the standard deviation divided by the mean, or the square root of the variance divided by the mean. The coefficient of variation is expressed as the ratio of the standard deviation of the distribution to the mean of the distribution, calculated by the formula $[\sqrt{(\Sigma P_i (X_p - X_i)^2 \div \Sigma P_i)} \div X_p]$ where X_p is the mean of some variable for all districts. Solving the formula typically yields in education finance research a single value between 0 and 1 wherein smaller values demonstrate smaller variations in the distribution, thereby indicating greater equity. While many uses of the coefficient of variation can be found, one example could compare differences in expenditure levels among districts in a state aid scheme that uses economies of scale as a basis for different levels of expenditure per-pupil authority. For statistical purposes, the coefficient of variation can be important when sensitivity to outliers, but not to changes in scale, is required.

Resource accessibility is an important step because equal access to resources is an obvious precondition of equal educational opportunity. It is equally important to go beyond resource accessibility to determine whether differences are related to variations in wealth or whether other explanations are possible.

Correlation

Simple correlation is a statistical technique that describes the degree to which two variables are associated with each other. For example, the two variables of wealth of school districts and expenditures per pupil could be examined for possible association. When these two variables are thus examined, the result is viewed as a description of the fiscal neutrality of a state aid formula. These variables are tested through correlation and regression analysis to confirm or deny a state's contentions that the formula is fiscally neutral. If the formula were indeed neutral, the analysis will indicate that there is no relationship between local wealth and revenue per pupil.

Several correlation procedures are possible based on the types of variables in question. For most purposes, the Pearson correlation coefficient is the appropriate tool and is calculated as $\sum[Pi(Xi - X)(Wi - W)] \div [\sqrt{} \sum [Pi(Xi - X)^2]][\sqrt{} \sum [Pi(Wi - W)^2]]$. If the example of correlating wealth and expenditures were the object of inquiry, the formula would be where $\sum$ is the sum of pupils in all districts, Pi is the number of pupils in district *i*, X*i* is the expenditure per pupil in district *i*, X is the mean expenditure per pupil for all districts, W*i* is the wealth per pupil in district *i*, and W is the mean wealth per pupil for all districts. The correlation coefficient would then yield a value ranging from -1.0 to +1.0. When two variables are positively associated, larger values of one tend to be accompanied by larger values of the other; conversely if two variables were negatively related, larger values in one tend to be accompanied by smaller values of the other. A value of +1.0 indicates a perfect positive linear relationship and a value of -1.0 a perfect negative linear relationship, while a value of 0 indicates no relationship. As a measure of fiscal neutrality, a correlation coefficient of 0 would indicate no wealth to expenditure relationship. Generally, inference concerning causation is available as well through accompanying regression analysis wherein the square of the correlation coefficient explains the amount of change in one variable caused by the other.

These tests yield a set of observations concerning the equity of an education finance formula. The objective is to gain the best picture of a state's aid scheme regarding the three dimensions of resource accessibility, wealth neutrality, and tax yield. Under these conditions, a formula should yield proof that resources are equally available to all children, that variations in resources are not related to local wealth patterns, and that equal tax yield follows from equal tax effort.

CHAPTER 6

BASIS FOR EDUCATION FINANCE CHALLENGES

Philosophical Basis for Education Finance Challenges

Research in education finance discusses two different types of equality or equity. During the formative years of education finance, the concept was largely one of horizontal equity. Operationalizing this statement would reflect an equal tax burden on all in order to have equal expenditures per pupil for equal educational programs. This postulate assumes that students and taxpayers are equal in circumstances and their ability.

Later, a number of researchers advanced this concept of equity to one of a higher standard.[53] The new standard said that, in fact, children are not equal and thus they must be treated unequally in order for equality to result. In essence, each student should have an opportunity in kind and quality of educational programs that would best meet their needs as individuals. Thus, students could be classified on the basis of needs, and these unequals could be treated unequally if the objective were one of equity.

Such distributions become complex as value judgments enter into such determinations. Essentially, three basic questions tend to emerge in such discussions:

- For whom is the distribution equitable?
- What resources should be equitably distributed? and
- How should these resources be distributed?[54]

Berne and Stiefel noted that these conceptual questions are difficult to fully and adequately address for all parties. They acknowledged that equity considerations must be applied to both students and taxpayers. The distribution must include educational services, resources, quality of educational staffs, support materials and other items important as educational inputs. The last question of how the fiscal resources should be distributed involves both the issues of horizontal and vertical equity.

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[53] *See, e.g.*, A. E. WISE, RICH SCHOOLS, POOR SCHOOLS 143-159 (1969); R. L. JOHNS AND E. L. MORPHET, FINANCING THE PUBLIC SCHOOLS (1960); and C. S. BENSON, THE CHEERFUL PROSPECT: A STATEMENT OF THE FUTURE OF PUBLIC EDUCATION (1965).

[54] *See, e.g.*, R. BERNE AND L. STIEFEL, *supra* note 50.

Traditionally, equity studies emphasize equity considerations for taxpayers and students. Thus, taxpayers in identical situations should theoretically pay identical amounts of taxes to support public education. Taxpayers in different situations should thus pay differing amounts in support of public education. Additionally, tax plans must be judged as to the *ex post* or *ex ante* equity concept. The differentiation involves the concept of what is being examined. In an *ex ante* examination, the characteristics of an education finance formula are examined. In an *ex post* equity examination, the assessment involves the spending patterns resulting from such a finance formula.

When a public education finance system is being formulated, it is by definition *ex ante*. It is an attempt to create a scenario by which equal tax rates result in equal spending. These characteristics would be ascertained prior to the implementation of the plan. When the examination is after the fact, once a plan has been implemented the equity methodology is by its design *ex post*. An examination of the actual spending patterns would then be ascertained.[55]

When equity issues are examined for children, then the concept of educational opportunity arises. It can be argued that all funds expended for a child's education must be included in this examination. Studies may examine either student input measures, e.g. revenues and expenditures, or student output measures, e.g. standardized test scores and so on. Due to lack of common consensus and comparability of student performance measures, student input data are most commonly utilized. In this manner, it is assumed that such inputs will offer the same opportunities to children. The logic is that the moral and legal requirements assume equal opportunities, not a guarantee of equal achievement on the part of the various segments of society.

The dilemma that education finance researchers must deal with concerns the inherent conflict between horizontal and vertical equity considerations. If per pupil expenditures were in fact perfectly equal, then certain students would not be served. That is, equity can only be achieved in relationship to the needs of students. Thus, expenditures must be in relationship to special needs. Additional funds must be accounted for by categories or other such mechanisms to differentiate among all students.

Thus, an equitable system would not be a system which reflected the same expenditures per pupil. This difficulty becomes almost insurmountable in that there is a lack of agreement by the parties involved, as well as a lack of data on which to base reasonable decisions.

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[55] The concepts of *ex post* and *ex ante* are discussed in greater detail in L. S. Friedman and M. Wiseman, *Understanding the Equity Consequences of School-Finance Reform*, 48 HARV. EDUC. REV. 193-226 (1978); and R. Berne and L. Stiefel, *Taxpayer Equity in School Finance Reform: The School Finance and the Public Finance Perspectives*, 5 J. EDUC. FIN. 36-54 (1979).

Overall, research on the relationship of moneys expended and student achievement reveals mixed results. The basic research suggests that there is only a minimal relationship between expenditures and student achievement. However, those moneys spent on direct instructional activities yield the most positive relationship between student outcomes and moneys expended. Or stated in another fashion, the amount of moneys spent beyond a given point is not as important as what the moneys are spent on.[56]

Plaintiffs counter that this indeed is the point in that the school districts in question cannot generate enough moneys for either the basic programs, much less those moneys necessary to meet severe education needs within districts that have little, if any, means to generate such funds. Defendants often tend to overemphasize the concept that moneys do not make any significant differences. If, in fact, that were the case then the state could easily level down to equalize among all the school districts.

Specific state studies have generally been consistent with the relationship of moneys and quality educational systems. For example, those districts that have greater expenditures per pupil exhibit lower teacher pupil ratios, greater support and administrative services, higher paid and better trained teachers, and above all they exhibit greater spending on direct instructional activities.[57] These are the specific traits identified with student performance.

Specifically, research has shown that moneys expended on basic instructional expenditures are highly and positively correlated with standardized test scores. In fact, certain studies tend to show that these relationships are linear in nature in that the more moneys expended the higher the standardized test scores.[58] In overall summation, moneys spent do not seem to produce significant differences in student achievement. However, when moneys are available to school districts and when they expend moneys on direct instructional services, then these moneys do seem to produce higher student learning as measured by standardized achievement tests.

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[56] *See, e.g.*, G. V. Glass, *Primary, Secondary, and Meta-Analysis of Research,* 5 Educ. Researcher 3 (1976); T. S. Childs and C. Shakeshaft, *A Meta Analysis of Research on the Relationship Between Educational Expenditure and Student Achievement,* 12 J. Educ. Fin. 249 (1986).

[57] *See, e.g.*, W. T. Hartman, *District Spending Disparities: What Do the Dollars Buy?* 13 J. Educ. Fin. 436 (1988).

[58] *See* C. M. S. Lee, I. W. Aron and R. H. Aron, *An Analysis of Michigan Educational Assessment Program (MEAP) Scores and School Districts Revenues and Expenditures,* 13 J. Educ. Fin. 496 (1988).

Constitutional Issues and Logic

Since *San Antonio v. Rodriguez*[59] plaintiffs have utilized a variety of attacks on state systems of finance distributions. Inasmuch that *Rodriguez* prevented any effective federal challenge along these lines, the plaintiffs have focused on the state courts. Plaintiffs often argue that huge disparities cannot further a state interest. Plaintiffs argue that educational opportunities of some groups of students are so disparate that it is beyond any reasonable scheme of classification by a state. Notwithstanding this burden, plaintiffs may be able to pursue relief in some remedial context that serves the same purpose.[60]

Generally, school districts with high assessed valuations can raise greater sums of moneys than those school districts with lower assessed valuations. Thus, an equity problem occurs. In fact, there may be a correlation between expenditures and assessed valuation. However, as previously noted, local boards of education are generally prevented from unilaterally extending beyond state-imposed tax limits. As a result, the question becomes one of whether these students are denied equal educational opportunities, generally measured by programmatic offerings, as a result of the state distribution formula.

Presently, plaintiffs tend to make their claims based on the language of the state constitution. Generally, these claims argue that the state constitution requires a minimal standard which is not being met or that the existence of vast funding disparities denies the plaintiffs' equal protection under the applicable state constitution. Generally, the present state challenges based on equal protection may meet with strict or rational basis interpretations.[61] These equal protection challenges have tended to focus on education as a fundamental right under the specific controlling language of the applicable state constitution.[62] Specifically, plaintiffs were able to successfully have a 1956 amendment to the Alabama Constitution overturned as it was designed for the purposes of maintaining a segregated public elementary and secondary school system.[63] As an overview, the states of Arizona, California, Connecticut, Kentucky, Montana, West Virginia, Wisconsin, and Wyoming have declared that education is a fundamental right under the state constitution. States which have declared that education is not a fundamental constitutional right include Arkansas, Georgia, Idaho, Michigan, New Jersey, New York, Ohio, Oregon, and Pennsylvania. Simply because education is included with a high degree of specificity within a state constitution does not make education a fundamental right under the state constitution. However, it must be fully realized that education can clearly be a fundamental right under a state constitutional provision and not under the Federal Constitution. Or, depending upon the subject matter, courts can rule that state equal protection clauses are identical to the Federal Constitution under the Fourteenth Amendment and thus must be tested by the same standards. Notwithstanding this concept, it has been suggested that equal protection claims could be made in the federal courts if in fact plaintiffs could demonstrate a lack of legitimate purpose. For example, it is conceivable that courts may be led to see that state interest in local control contributes to funding disparities and this action is in fact contrary to state interests.[64] The states' equality provisions, as shown in the appendix, demonstrate significant diversity.

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[59] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973).

[60] This point is addressed in K. Roach, *The Limits of Corrective Justice and the Potential of Equity in Constitutional Remedies*, 33 ARIZ. LAW REV. 859-905 (1991).

[61] While this strategy is true, two cases held that education was a fundamental right, but choose to apply a rational basis test: Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989); Shofstall v. Hollin, 515 P.2d 590 (Ariz. 1973).

[62] The approach used in Mississippi is an exception to this strategy. However, other strategies for the plaintiffs would be available and significantly more fruitful.

[63] For an excellent discussion of this *see School Finance Litigation in Alabama* 72 EDUC. L. REP. (West) 691 (April 23, 1992).

Additionally, the specific constitutional language is tested as to the meaning of the language in relationship to the actual results of the state distribution scheme. Or, in other words, what is the mandate, does the state meet the mandate, and how is the mandate to be met? Disparities may not reflect the language of the constitution in terms of being thorough or efficient or some other state specific controlling language e.g., uniform, general, and so on.[65] Within these arguments can be applied the arguments of rational or strict scrutiny under the state constitution.[66] Further, state controlling language may include constitutional statements of purpose. These purpose statements may assist the plaintiffs greatly in terms of the goals and aspirations of the founders of the state constitution. Some states have fairly explicit purpose statements. Additionally, plaintiffs may argue that other duties are not described in similar manners in that the purpose statement is unique and distinctive within the state constitution as this elaboration within itself creates the fundamentality of the issue.[67]

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[64] Operationally, this concept is fully developed by the authors in ADEQUACY OF EDUCATIONAL REVENUES IN OKLAHOMA SCHOOL DISTRICTS: EXPERT ANALYSIS ON BEHALF OF PLAINTIFFS IN Fair School Finance Council, Inc. v. State of Oklahoma (Wood, Thompson & Associates, Inc. 1992).

[65] This logic can also be found in M. Jaffe and K. Kersch, *Guaranteeing a State Right to Quality Education: The Judicial-Political Dialogue in New Jersey*, 20 J. L. & EDUC. 271-300, 276 (1991).

[66] *See, e.g.*, Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); and Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989). To date, no state supreme court has applied an intermediate scrutiny standard. In Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, at 788 (Md. 1983), the court noted that the state of Maryland would successfully withstand such an examination, yet the court upheld the system based on a rational basis standard.

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[67] *See, e.g.*, the purpose statement in the Indiana Constitution.

CHAPTER 7

EARLY EDUCATION FINANCE LITIGATION

Early State Cases

The first state during the modern era to strike down the state's education finance formula was California in *Serrano v. Priest* in 1971.[68] The California Supreme Court reversed the superior court judgment and ruled that the methodology for the distribution of state moneys could not be a function of local property wealth. The standard of wealth neutrality was upheld by the state supreme court. At the trial court, the plaintiffs contended that the California methodology for aiding public school districts violated the Equal Protection Clause of the federal and state constitutions. They contended that this was, "because the amount of money spent per pupil varies from one district to another according to the wealth of a pupil's parents and the district in which he resides, not according to his educational needs."[69] The plaintiffs argued that the Equal Protection Clause dictated that the amount of moneys expended per pupil could not be dependent upon the wealth of the local school district. Further, they argued that only reasonable expenditure differences could only be related to the differences in the educational needs of the pupils. The trial court ruled on behalf of the state noting that the Equal Protection Clause did not "require that the school system be uniform as to quality of education or money spent per pupil."[70] The plaintiffs appealed to the state supreme court in 1971. The court reversed the trial court's decision noting that heavy reliance on local property wealth and taxes invidiously discriminated against the poor and thus violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution, as well as that of the California Constitution. It should be noted that in the original finance formula, the California methodology distributed moneys on a uniform per-pupil basis for all school districts regardless of wealth of the district or lack thereof. Graphic examples were presented reflecting disparities from Beverly Hills and the poor contiguous school districts. Data revealed that Beverly Hills expended $1,232 per pupil with a tax rate of $2.38. Conversely, another school district within the same geographical area spent $577 per pupil with a tax rate of $5.48. State aid did decrease the gap to a small amount with a $125 per-pupil foundational grant to Beverly Hills while the other district received $307 per pupil. Nonetheless, disparity remained in the amount of $450 per pupil during this period of time.

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[68] Serrano v. Priest, 487 P. 2d 1241 (Cal. 1971).

[69] *Serrano*, 89 Cal. Rptr. 345 at 348 (Cal. 1970).

[70] *Id.* at 350.

The court found that education was a fundamental interest. Traditionally, fundamental interests of our society reflect those issues that are viewed as being so essential to individual interests that the actions of governmental agencies should be reviewed with heightened scrutiny. Conversely, if the view of the court were to be designed to meet a rational basis test then the actions of governmental agencies are presumed to be valid; thus the governmental agenda must only demonstrate a legitimate interest and a rationally related means to meet that interest. Thus, the elevated status of a suspect classification was the proper test of application. The court was persuaded that individuals must be educated in order to pursue the rights that are explicitly guaranteed to them in the constitution, e.g., voting, free speech, and religious freedom. Thus, unless the state could argue some form of a compelling interest, the state could not discriminate in terms of the quality of educational services offered to students based on the wealth, or lack thereof, in the school districts of the state.

In 1976, the California Supreme Court reviewed this issue again in *Serrano II*[71] in light of the Supreme Court's decision in *Rodriguez* and due to charges that the issues leading to the first suit had not been resolved by the state legislature. The court relied on state constitutional grounds in upholding its previous decision. Additionally, the court accepted a cost-quality relationship when it opined that, "equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning."[72] Thus, in *Serrano II*, the court outlined a manageable standard that may still prove persuasive to other state courts in the future. The grounds of fiscal neutrality and the discussion of cost-quality relationships serve as one manageable standard in assessing distribution formulas.[73]

Equity evaluations common to education finance assessments involve the concept of wealth neutrality. Wealth neutrality is the concept by which each school district's funding is dependent only upon the district's efforts which would be totally independent of its wealth or ability to pay.[74] Operationally, the authors describe this concept as each school district being able, via the distribution formula, to obtain the same revenues per weighted pupil provided that each school district makes the same fiscal effort.

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[71] Serrano v. Priest, 557 P. 2d 929 (Cal. 1976), hereinafter *Serrano II*.

[72] *Serrano II*, 557 P.2d at 939.

[73] For a discussion of the remedies as they specifically apply to California *see Remedies in School Finance Equity Litigation*, 36 Educ. L. Rep. (West) 1-6 (1987).

[74] S. J. Carroll, The Search for Equity in School Finance: Results From Five States 23 (1979).

Thus, when students become the issue of examination, the concept of equality of educational opportunity rises to the forefront of this discussion. Because education is indeed a public service, it should be provided to all on an equal basis. Further, public education does in fact improve the nation's human capital.

In *Serrano III*,[75] the California Supreme Court refined its previous decisions by allowing that special needs programs should not be considered when examining wealth-related disparities. Hence, in this instance the court again provided powerful persuasive logic to other state courts when it focused on vertical equity considerations in measuring disparities. The court stated that the state distribution formula could legitimately fund special categories at different levels.

The first education finance distribution case in Minnesota appeared in *Van Dusartz v. Hatfield*.[76] The U.S. District Court in Minnesota ruled that the finance system was unconstitutional. The court embraced the logic found in *Serrano I* when it concluded that education was a fundamental interest under the Equal Protection Clause of the Fourteenth Amendment. Thus, the proper standard or test would be one of strict scrutiny since district wealth would therefore be a suspect classification. The court noted that the distribution formula was state-created.[77] The court stated that spending for a child's education could not be a function of wealth other than the wealth of the state as a whole. This standard was identified by the court as wealth neutrality. The court noted that the doctrine of fiscal neutrality would not allow discrimination based on wealth, and that the state was free to allow local effort and choice. Further, this concept would still allow the state to design a formula that did not violate the concept of equal protection. Evidence was presented showing that relatively wealthier districts enjoyed lower tax rates while exhibiting higher spending patterns. Specifically, plaintiffs presented statistical data whereby poorer districts would have to tax themselves with 300% increases to equal the expenditure patterns of certain wealthier school districts. The Minnesota court noted the following observations concerning the correlation between expenditures and quality of education:

> While the correlation between expenditure per pupil and the quality of education may be open to argument, the court must assume here that it is high. To do otherwise would be to hold that in those wealthy districts where

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[75] 569 P.2d 1303 (1977).

[76] 334 F. Supp. 870 (D. Minn. 1971).

[77] Despite similar factual situations *c.f.* Sweetwater County Planning Comm. v. Hinkle, 491 P.2d 1234 (1971); *juris. relinquished*, 493 P.2d 1050 (1972).

> the per pupil expenditure is higher than some real or imaginary norm, the school boards are merely wasting the taxpayers' money. The court is not willing to so hold, absent some strong evidence. Even those who staunchly advocate that the disparities here complained of are the result of local control and that such control and taxation with the resulting inequality should be maintained would not be willing to concede that such local autonomy results in waste or inefficiency.[78]

In *Hargrave v. Kirk*[79] the United States District Court, Middle District of Florida, ruled that poorer counties in Florida were prevented from providing an equal education as compared to wealthier counties. The trial court opined, "[w]hat apparently is arcane to the defendants is lucid to us–that the Act prevents the poor counties from providing from their own taxes the same support for public education which the wealthy counties are able to provide."[80] Later, the finding was vacated by the supreme court which noted that another case had been filed attacking the formula on state constitutional grounds. The defendant argued that the finance formula was merely one aspect of the comprehensive legislation concerning education financing throughout the state. Thus, the court should wait for the factual record to be fully developed in the other case in that it could be critical to the decision of the equal protection claim. The case was then vacated and remanded in order to have the factual record fully developed. Before this new case was completed, the decision in *Serrano I* was issued.[81]

Parker v. Mandel[82] offers insight from the state of Maryland as to several early strategies. Additionally, the court's judgment significantly differed from the logic of the courts in California and Minnesota. The first strategic issue was whether the plaintiffs' actions should be dismissed as being barred by the Eleventh Amendment.[83] The defendants also argued that the issue before the court was essentially a political issue as opposed to an issue that could be adjudicated. The court rejected this defense noting that the issue was to be decided by state courts rather than the federal courts. Further the court rejected the concept that the issue was essentially a political one when it noted that it did not involve equal branches of government.

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[78] Van Dusartz v. Hatfield, 334 F. Supp. 870 at 874 (D. Minn. 1971).

[79] Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated and remanded on other grounds sub nom.*, Askew v. Hargrave, 401 U.S. 476 (1971).

[80] *Hargrave*, 313 F. Supp. at 947.

[81] Askew v. Hargrave, *vacated on other grounds sub. nom.*, 401 U.S. 475, 91 S.Ct. 856 (1971).

[82] Parker v. Mandel, 344 F. Supp. 1068 (D. Md. 1972).

[83] The Eleventh Amendment states, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

Further, the court rejected the concept that education was a fundamental interest and that the lack of equal education opportunities was a suspect classification. The court in rejecting this argument stated:

> Few if any guidelines have been suggested by the Supreme Court for determining whether a claimed violation of the equal protection clause should be considered under the strict scrutiny test or under the reasonable basis test. A high degree of subjectivity would appear to be involved in determining whether a subject is to be termed a fundamental interest or whether the classification is to be called suspect.[84]

Further, the court rejected the argument that education was a fundamental interest within the meaning and scope of the Equal Protection clause of the Fourteenth Amendment. The court opined:

> To hold that the strict scrutiny test applies to legislation of this sort would be to render automatically suspect every statutory classification made by state legislatures in dealing with matters which today occupy a substantial portion of their time and attention. If the test which plaintiffs seek to apply is the appropriate standard here, then a state, on each occasion that a similar Fourteenth Amendment attack were made against a statute dealing with health, education or welfare, would be required to bear the burden of proving the existence of a compelling state interest. This Court cannot conclude that state legislatures are to be straitjacketed by such recently evolved constitutional theory in areas that have traditionally been the exclusive concern of the state.[85]

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[84] *Parker*, 344 F. Supp. at 1076.

[85] *Id.* at 1079.

In 1973, the U.S. Supreme Court in a five-to-four vote ruled in *San Antonio v. Rodriguez*[86] to uphold the Texas education finance scheme. The Supreme Court ruled, although the distribution formula was certainly flawed, that the Texas education finance system permitted and encouraged local control of schools as a valid public policy. Further, it ruled that the finance system did not disadvantage any suspect class, that education was not a fundamental right,[87] and that the finance system did not violate the Equal Protection Clause of the Fourteenth Amendment.

The Court in rejecting the fundamentality arguments ruled:

> Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.
>
> Education, of course, is not among the rights afforded explicitly protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. . . . [T]he undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.[88]

The Court also firmly rejected the argument that there was a clear nexus between education and other fundamental rights. The Court noted that the United States Constitution guarantees only the lack of governmental intrusion into individuals' lives.[89] The plaintiffs were attempting to articulate that equal educational opportunity is enabling, i.e., education creates an opportunity chain. Howe described the concept when he wrote:

> Education is, no doubt, valuable in its own right, but it also is enabling in the sense that it serves (however imperfectly) as the gateway for obtaining other societal goods, such as desirable employment, adequate income,

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[86] *Rodriguez*, 411 U. S. 1, 93 S. Ct. 1278, *reh'g denied*, 411 U.S. 959 (1973).

[87] *Rodriguez*, 411 U.S. at 35.

[88] *Id.* at 33-35.

[89] *Id.* 411 U.S. at 35.

> and political power. For this reason, equal educational opportunity is related to equal opportunity more generally because it serves as an important link in what might be termed an opportunity chain. Accordingly, the strength of the educational link determines the overall strength of the opportunity chain in the sense that the array of opportunities open to an individual is (again, imperfectly) determined by the quality of his or her education.[90]

Despite this rejection of the concept of the opportunity chain and the resultant limitations, plaintiffs in such suits may have other avenues available to them in federal courts as described herein.

The original suit in *Rodriguez*[91] was filed on behalf of children who resided in property-poor school districts. The suit was filed during the time that *Serrano I* was under adjudication in the California judicial system. The bulk of arguments before the United States District Court, Western District of Texas, were very similar to those presented in *Serrano*. Plaintiffs contended that poor children were harmed by the then present Texas finance distribution formula. This harm was due to the fact that education was alleged to be a fundamental interest. Further, they argued that the distribution formula discriminated against poor school districts.

The plaintiffs presented an array of data which reflected the vast differences in potential and real revenues between wealthy and poor school districts. Based on survey research, the plaintiffs were able to specifically show that selected rich school districts were able to yield local levies of $585 per pupil, while the highest of the select sample yielded only $60 per pupil in local revenues. Data also reflected that the richest school districts exhibited very high socioeconomic status data compared to the poorest school districts of the state. Specific data reflected median family incomes in the relatively wealthy school districts that were nearly twice those of poor school districts. The market value per-pupil range was from $5,429 to $45,095. Further data reflected that the richest school district had to levy only $21 per pupil, while the poorest school district had to levy $307 per pupil. Further, these two school districts received $231 and $543 in state aid, with the larger amount going to the wealthier school district.

The Texas trial court ruled that the distribution formula did discriminate by allowing property-rich school districts to provide higher quality education while maintaining lower tax rates. The trial court noted that education was a fundamental right. Since the State of Texas could not show a rational basis for its system, the court ruled that a new system would have to be created. The court did note the difficulties and resultant discrepancies created via a system of financing public education as ad valorem taxes differed significantly from one district to another. Specifically, the trial court stated the following:

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[90] Howe, *Liberal Democracy*, at 460.

[91] Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280 (W.D. Tex. 1971).

> Not only are defendants unable to demonstrate compelling state interest for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications. They urge the advantages of the present system in granting decision-making power to individual districts, and in permitting local parents to determine how much they desire to spend on their children's schooling. However, they lose sight of the fact that the state has, in truth and in fact, limited the choice of financing by guaranteeing that some districts will spend low (with high taxes) while others will spend high (with low taxes).[92]

On appeal, in 1973, the United States Supreme Court overturned the trial court by ruling that the Texas distribution system did not violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The Court focused its analysis on whether a heightened scrutiny should be applied in this instance. The court found that such a standard was not applicable, inasmuch that poverty was not a suspect classification.[93] Thus, without the use of the heightened scrutiny standard, the Court could rely on the standard of rational relationship. This would prove to be the standard by which the state could defend the system as it was argued that the distribution formula met a legitimate state purpose in the manner in which the funds were distributed. The Court stated:

> We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicit or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the

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[92] *Rodriguez*, 377 F. Supp. at 284.

[93] For a discussion of the legal issues involving the poor, *see* P. B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1-61 (1987).

> judgment of the District Court should be affirmed. If not, the Texas scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment.[94]

The Court examined the issue of discrimination against the poor. In order to establish the fact that a class of individuals is discriminated against, it must be established that those affected must be unable to pay for the benefit in question. Thus, the class must sustain an absolute deprivation of an opportunity that others enjoy. The Court found that this situation did not exist in the State of Texas. The Court noted that the poor were to be found in wealthy school districts. Further, in no school district could it be argued that the poor were not receiving an education. Thus, the Court noted that the argument was one of relative deprivation of those students who resided in property-poor school districts. The Court ruled that the Equal Protection Clause did not require "absolute equality of precisely equal advantages." Specifically, the Court held:

> By providing 12 years of free public school education, and by assuring teachers, books, transportation and operating funds, the Texas legislature has endeavored to "guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by 'a Minimum Foundation Program of Education.' " The State repeatedly asserted in its beliefs in this Court that it has fulfilled this desire and that it now assures 'every child in every school district an adequate education.' No proof was offered at trial persuasively discrediting or refuting the State's assertion.[95]

The Court further qualified this distinction by stating:

> It is not the province of this court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus the key to discovering whether education is "fundamental" is not to be found

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[94] *Rodriguez*, 411 U.S. at 17.

[95] *Id.* at 24 (citations omitted).

> in comparisons of the relative societal significance of education . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.[96]

The Court specifically noted its difficulty with the quantitative analysis when it stated, "Even it were conceded that some identifiable quantum of education is . . . constitutionality protected . . . we have no indication that the present levels of educational expenditure in Texas provide an education that falls short."[97]

The Court strongly felt that in order to embrace the concept of strict scrutiny that it would be forced to trust its judgment, rather than the judgment of the legislature in determining the amount of local and state taxation in the distribution formula. Hence, it wished to avoid such an intrusion into what had always been traditionally viewed, in the judgment of the Court, as a state and local function.

The Court specifically expressed grave reluctance to enter into the state and local issues of this nature. The court viewed the distribution formula as having certain purposes, including one of involving local citizens in the educational process and allowing for a maximum of local participation in tailoring educational programs to local needs.

Most important to practicing attorneys and education finance researchers was that the Court declared that education was not a right afforded explicitly or implicitly under the Constitution. Thus, the equal protection standards of the Fourteenth Amendment were not applicable to education finance cases at the federal level. Specifically, Justice Powell wrote that public education was so complex as to present "intractable economic, social, and even philosophical problems." Given this complexity of a statewide public school system "there will be more than one constitutionally permissible method of solving them."[98] The Court stated:

> [T]o the extent that the Texas system of school finance results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. . . . The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful

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[96] *Id.* at 33-34.

[97] *Id.* at 36.

[98] *Id.* at 42 *quoting* Dandridge v. Williams, 397 U.S. at 487.

> discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and in major part is the product of reasonable studies by qualified people . . . ."[99]

In the Court's closing comment it terminated any future attempts at pursuing these issues based on this methodology within the federal judicial system. The Court wrote:

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various states, and we do no violence to the values of federalism and separation of powers by our hand. We hardly need add that this court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.[100]

As background, it should be noted that the rational basis standard has generally been utilized for most economic activities. In 1970, specifically regarding economic activities, the U.S. Supreme Court stated:

> In the area of economics and social welfare, a State does not violate the equal protection clause merely because the classification made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." "The problems of government are practical ones and may justify,

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[99] *Id.* at 54.

[100] *Id.* at 58-59.

> if they do not require, rough accommodations–illogical, it may be, and unscientific." "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."[101]

Thus, *Rodriguez* effectively ended the specific and direct strategy of education as a fundamental right before the federal courts for education finance reformers.[102] Hence, due to *Rodriguez*, future education finance complaints were lodged primarily within the state courts. This threshold barring of these fundamentality suits is predicated on the Court not wishing to revisit this issue. The likelihood of significant change regarding fundamentality is, at present, extremely limited.

Notwithstanding this discussion, to this point the federal courts may be ripe for successful pursuit if the allegations can be framed in light of *Plyler v. Doe*.[103] In *Plyler* the U.S. Supreme Court established education as a vague quasi-fundamental right in that it should be judged by an intermediate standard. Although education was not guaranteed under the Constitution, ". . . neither is it merely some governmental 'benefit' indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction."[104]

The strict scrutiny standard, on the other hand, is utilized if a suspect classification or a fundamental right were to be involved in a question before the courts. Additionally, an intermediate scrutiny standard exists which involves the federal courts examining a quasi-suspect classification. In these issues, the government must prove that the classification reflects a substantive relationship to an important governmental interest.[105] At least in the federal courts " . . . any plea for a fundamental right to an education in the absence of a final determination that education is of itself a fundamental right must be constructed by drawing an indivisible link between education and other rights based in individual and collective liberties."[106]

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[101] *Dandridge*, 397 U.S. at 485 (1970) (*citations omitted*).

[102] *See* School Bd. of Parish of Livingston, La. v. Louisiana State Bd. of Elementary and Secondary Educ., 830 F.2d 563 (5th Cir. La. 1987); *See also* Papasan v. Allain, 478 U.S. 265, 106 S. Ct 2932 (1986). Papasan clearly allows a continued federal challenge under an equal protection concept, specifically noting that an equal protection claim based on an unequal distribution cannot be barred by the Eleventh Amendment. *See also School Finance and the Courts: A Reanalysis of Progress*, 59 Educ. L. Rep. (West) 949-950 (1990).

[103] Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382 (1982).

[104] *Id.* at 221.

[105] *See* Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a New Equal Protection*, 85 Harv. L. Rev. 1, 20-87 (1972). The intermediate standard has been utilized regarding issues such as: illegitimacy, Weber v. Aetna, 406 U.S. 164; aliens, Hampton v. Wong, 426 U.S. 88; and mental retardation, Cleburne v. Cleburne, 473 U.S. 432.

Notwithstanding this avenue, the best potential for immediate challenge and success by plaintiffs continues with the appropriate state courts based entirely on state constitutional controlling language. In fact, state constitutional language may enable plaintiffs to secure success far beyond the potential ever envisioned by plaintiffs through the federal judiciary system.

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[106] Thompson, *School Finance and the Courts* at 952.

CHAPTER 8

CONTEMPORARY EDUCATION FINANCE LITIGATION

Post *Rodriguez*

Since the determination in *Rodriguez*, litigation has focused on the state courts. Suit was brought in Michigan[107] over the constitutionality of the state public education distribution formula. In the original suit, the state supreme court held that the finance system denied equal protection under the state constitution. The Michigan distribution formula was heavily based on the wealth of local school districts as measured by the state equalized valuation of taxable property within each school district. Plaintiffs presented data which reflected high disparities involving a number of indicators, including total expenditures per pupil, direct instructional expenditures, and high correlations with local wealth. Other data included such issues as high standardized test scores in districts which paid classroom teachers significantly more moneys. The trial court found that local school district wealth was a suspect classification. Utilizing this framework, the trial court held for plaintiffs in challenging the state school aid distribution formula. During the trial court proceeding the state legislature significantly revised the school aid distribution formula. The trial court noted that it would be willing to examine the new formula when appropriate. On rehearing,[108] the court noted that *Rodriguez*, having been decided in the interim, had decided the issue of equal educational opportunity and thus questions regarding this issue were not an issue before the court. While *Milliken* was proceeding, the new formula was being litigated in *Board v. Porter*[109] the court examined the remaining issues. The court was presented with rather exhaustive data regarding the financing of public education within the state. The court concluded that the system of financing public education within the state had a "legislative purpose of gradually equalizing state aid while at the same time not reducing the aid to any district."[110] Thus, the distribution formula in Michigan remained intact until the next suit.[111]

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[107] Milliken v. Green, 203 N.W.2d 457 (Mich. 1972) (hereinafter *Milliken I*).

[108] *Milliken*, 212 N.W.2d 711 (Mich. 1973); (hereinafter *Milliken II*).

[109] Board of Educ. of Oakland Sch. v. Porter, 239 N.W.2d 645 (1976).

[110] *Board of Educ. of Oakland Sch.*, 239 N.W.2d at 649.

[111] Sutton v. Cadillac Area Pub. Sch., 323 N.W.2d 582 (1982).

In New Jersey, the state supreme court in *Robinson v. Cahill* ruled that the state education finance distribution scheme failed to meet the state constitutional burden.[112] The plaintiffs' arguments were based on New Jersey's equality standard of 'thorough and efficient' clause of the state constitution.[113] When the state supreme court found that the manner of distribution was unconstitutional, this was the first instance of the modern era where a state court did so based solely on state constitutional grounds. The court was persuaded that equal educational opportunity depended in substantial measure on the moneys invested in a child's education.[114]

In both the *Serrano* and *Robinson* cases, while based on significantly different arguments, the courts were persuaded that the quality and quantity of educational opportunity was highly correlated with the moneys available for education. Hence, *Serrano* and *Robinson* firmly established the concept of student equality and wealth neutrality as a legitimate basis for challenging state distribution schemes.

In 1973, the Arizona state distribution formula was challenged. An Arizona superior court granted judgment for taxpayers, but not students, who claimed that the system was unconstitutional on state and federal violations of equal protection. On appeal, the state supreme court in *Shofstall v. Hollins*[115] reversed the decision and held that the state constitution only provided for a basic right to an education. The state thus required only that the distribution formula be rational, reasonable, and neither capricious nor discriminatory. Education was judged to be a fundamental right and the fact that taxpayers had differentiated tax burdens varying with the various levels of governmental service was not, per se, a violation of equal protection under the state or federal constitutions.

The challenge to the Illinois education finance distribution formula occurred in 1973 in *Blase v. State*.[116] The state supreme court upheld the circuit court and held that the constitutional provision that the state had the major responsibility for financing public education did not require a literal interpretation of at least fifty percent of funds be provided by the state for the operation of the public schools.

In 1974, the Supreme Court of Washington in *Northshore School District v. Kinnear*[117] upheld the state education finance distribution formula. The plaintiffs had sought to declare the system unconstitutional.

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[112] Robinson v. Cahill, 287 A.2d 187 (N.J. Super L. 1972), *aff'd*, 303 A.2d 273 (NJ 1973).
[113] N.J. CONST. art. VIII, § 41.
[114] *Robinson*, 287 A.2d at 481.
[115] Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973).
[116] Blase v. State, 302 N.E.2d 46 (Ill. 1973).
[117] Northshore Sch. Dist. v. Kinnear, 530 P.2d 178 (Wash. 1974).

The court declared that a uniformity of size and property values was not necessary to satisfy the requirements of the Fourteenth Amendment.

In 1978, the Supreme Court of Washington in *Seattle v. State*[118] partially reversed its findings in Northshore. In Seattle, the court held that there could be compliance with the state constitution only if there were sufficient moneys derived through dependable and regular tax sources. The heavy reliance on special excess levies to provide for basic educational programs was unconstitutional. The court held that the special excess levies utilized by many school districts for basic programs should be only used for enrichment programs and that it was the duty of the legislature to make ample provision for all the children of the state.

Several states during the late 1970s reached similar conclusions in upholding the state education finance distribution formula.[119] While the factual situations were highly specific, the courts essentially ruled that if property wealth revealed widely varying levels of local wealth while having a tendency to result in unequal expenditures, the overall system was still within constitutional boundaries in that minimal levels of education were offered to all. Specifically, the Idaho Supreme Court issued a lengthy opinion examining complex data as well as arguments involving equal educational opportunity and the disparities found among Idaho public school districts. The court's standard was one of a rational basis of the Equal Protection Clause when it overturned the trial court's decision in upholding the distribution formula. The majority opinion stated:

> Because of . . . [the] ongoing argument as to the relationship of funds expended per pupil . . . to the quality of educational opportunity, we refuse to venture into the realm of social policy under the guise of equal protection of the laws or fundamental right to education. The courts are ill-suited to a task which is the province of the legislature.[120]

Buse v. Smith[121] in Wisconsin was unique in education finance litigation in that it is one of only two settled case that specifically challenged the state's recapture clause. The Wisconsin Supreme Court held that this concept violated the state constitutional requirement for uniform taxation. While the court ruled that education was a fundamental right, this concept did not require equalization of revenue raising ability of school districts. The most recent recapture case was in Kansas as discussed later in this text.

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[118] Seattle Sch. Dist. No. 1 of King County v. State, 585 P.2d 71 (Wash. 1978).

[119] *See* Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); Olsen v. State, 554 P.2d 139 (Or. 1976); Scarnato v. Parker, 415 F. Supp. 272 (M. D. La. 1976).

[120] *Thompson*, 537 P.2d at 642.

[121] Buse v. Smith, 247 N.W.2d 141 (Wis. 1976). Recently Michigan addressed this issue ruling against the state's recapture distribution formula, Schmidt v. State, 483 N.W.2d 25 *reh'g denied*, 491 N.W. 829; Durant v. Department of Educ. (on second remand) 463 N.W. 2d 461 (1990).

In *Olsen v. State of Oregon*[122] a relatively complex set of circumstances faced the state in defending the state distribution formula. The Oregon system consisted of elementary, secondary, and unified school districts. Further, the funding patterns were complicated by intermediate education districts. Additionally, many school districts had timber lands and "California Lands" which generated separate funds. A timber severance tax also existed. Data regarding the assessed valuations of timber reflected wide variations of its value, as well as the complicating factor of a timber severance tax at the time of harvest. Data reflected disparities ranging from assessed valuation from $203,000 to $19,000 per pupil at the time of the suit. The Oregon State Supreme Court specifically noted that *Rodriguez* was not controlling in this instance. The plaintiffs had contended that education was a fundamental right and thus the classification system of school districts based on assessed valuations should be subject to strict scrutiny as it harmed this fundamental right to education. The state supreme court rejected this contention when it stated that "this approach of categorizing an interest as a fundamental or nonfundamental interest and deciding this issue upon the basis of whether the interest is explicitly or implicitly guaranteed by the Constitution is not a helpful method of analysis."[123] The court noted that its role should be one of weighing "the detriment to the education of the children of certain districts against the ostensible justification for the scheme of school financing."[124] The court also noted that simply because the plaintiffs had presented alternative systems of financing public education in the state, this was not sufficient to have the court rule that the present system was not valid. The court concluded that the wealth disparities did not violate the equal protection guarantees and did not violate the uniform mandate of the state constitution and thus upheld the system of distribution utilized by the state.

In 1991, the Supreme Court of Oregon again upheld the distribution formula. In *Coalition for Equitable School Funding Inc. v. Oregon*[125] the plaintiffs argued that certain school districts did not have adequate funds to meet state imposed standards. The court noted that the "Safety Net" amendment previously passed by the legislature allowed school districts to specifically levy property taxes for general operating purposes without voter approval. Hence, there was no requirement for the state legislature to specifically appropriate funds for the affected school districts.

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[122] *Olsen*, 554 P.2d 139 (1976).

[123] *Id.* at 144.

[124] *Id.* at 145.

[125] 811 P.2d 116 (Or. 1991).

In 1977 the Connecticut courts were asked to address the federal and state equal protection clauses as well as the state education clause in *Horton v. Meskill*.[126] The Connecticut Superior Court was persuaded by the earlier logic of *Robinson*. The court ruled that the state distribution formula was in violation of the state Equal Protection Clause. The court reasoned that public education was so basic and fundamental that any alleged infringement must be scrutinized in a strict manner. The Connecticut Supreme Court, in 1979, affirmed the lower court in *Horton II*.[127] During the next several years the Connecticut state legislature enacted various amendments to the funding formula for state aid. The issue returned to court, primarily based on these changes. In *Horton III*,[128] the state supreme court upheld the original court decision and struck down the various amendments passed since that time. Again, it was established that state constitutional language could be applicable and held to a higher standard than that of the U.S. Constitution.

Beginning in 1978, New York experienced a lengthy challenge to its education finance distribution formula. In *Levittown v. Nyquist*[129] a county supreme court held that the formula violated the equal protection clauses of the state and federal constitutions. Plaintiffs, originally from two different suits, alleged that the New York formula violated the equal protection clause and education article of the state constitution and the Equal Protection Clause of the Fourteenth Amendment. As a result of *Rodriguez*, the Fourteenth Amendment complaint was withdrawn. Data were presented regarding the vast disparities of wealth among the school districts within the state. Data also revealed that poorer school districts levied significantly higher millage rates, yet could not offer the same educational services. The New York distribution formula called for school districts to levy fifteen mills in order to raise $1,200 per pupil. If the district could not reach this figure with a fifteen mill levy, then the state would make up the difference via state aid. Further, if a school district were to have an assessed valuation of more than $80,000 the district would receive no state aid, ($80,000 / 15 mills = $1,200). Regardless of the distribution formula, the state also allowed for a flat grant allocation which gave every school district state aid regardless of need. Full valuation districts above $101,000 would receive a minimum of $360 per pupil in state aid. Additional data reflected the various forms of save harmless provisions which effectively prevented a degree of equalization. Data revealed that the ratio from the wealthiest to the poorest school district was forty-six to one. The plaintiffs' analysis showed a direct correlation between local wealth and expenditures for public education. The state argued that its formula was a rational policy made by the legislature. The Supreme Court of Nassau County found for the plaintiffs. An appellate division of the court affirmed, but modified, the initial ruling.[130] The court differed in its rationale from the trial court. On further appeal, the Court of Appeals of New York ruled that the New York distribution formula did not violate the state equal protection clauses.[131] The Appellate Court noted that the system of financing public education did not violate the state constitution since the average per pupil expenditures exceeded all states except two. The court accepted these data-based arguments but strongly noted that the plaintiffs had not argued that their schools had not met a minimal standard as required by the Board of Regents. The court noted that the metropolitan overburden arguments were, in fact, a product of a variety of social ills and therefore could not be a function of the legislature's actions or inactions. The court examined the plaintiffs' arguments regarding the education article of the state constitution and opined that the language of the constitution made no mention of the fact that public education had to be substantially equivalent in every school district. The legislature had made a public school system available, and thus the court reversed the lower courts and upheld the constitutionality of the distribution formula.

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[126] Horton v. Meskill, 332 A. 2d 113 (Conn. Super. 1974).

[127] *Horton*, 376 A. 2d 359 (Conn. 1977), (hereinafter *Horton II*).

[128] *Horton*, 486 A. 2d 1099 (Conn. 1985), (hereinafter *Horton III*).

[129] Board of Educ. of Levittown v. Nyquist, 408 N.Y.S.2d 606 (N.Y. Sup. Ct. 1978).

In Ohio in 1979, the state supreme court on appeal and cross appeal in *Board of Education v. Walter*[132] found that the education finance distribution system did not violate the thorough and efficient provisions of the state constitution. The Ohio distribution formula required that all school districts levy at least twenty mills, and the formula rewarded school districts up to thirty mills as a reward for effort factor. The basic support program was a power equalizing model. The formula guaranteed a total yield of $48 per pupil per mill for the first twenty mills. The reward for effort model was set at $42 per pupil per mill. The state deducted the district's local yield per pupil per mill from the guaranteed $42 by multiplying the difference by the ADM and the equalized millage in excess of twenty but not exceeding thirty mills. The court noted that the legislature had developed a rational plan by which local control of schools served a valid public purpose. Further, the fact that it might be possible to develop a better and more efficient and thorough system was not material to the question before the court.

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[130] *Board of Educ. of Levittown*, 83 A.D. 217, 443 N.Y.S.2d 843 (N.Y. A.D. 2 Dep't 1981).

[131] *Board of Educ. of Levittown*, 57 N.Y.2d 27, 439 N.E.2d 359 (1982), *appeal dismissed*, 459 U.S. 1138, 103 S. Ct. 775 (1983).

[132] Board of Educ. of Cincinnati v. Walter, 390 N.E.2d 813 (Ohio 1979).

In Pennsylvania the plaintiffs' claim in *Danson v. Casey*[133] was dismissed by the Commonwealth Court. The state supreme court upheld the lower court noting that the plaintiffs had not presented sufficient allegations to justify overturning the distribution formula based on the constitutional language involving a thorough and efficient system of education. Further, the fact that the Philadelphia school district did not have the power to directly levy taxes did not violate the state constitution.

In Wyoming, the state supreme court reversed a lower court decision in declaring the state system of financial distribution to be unconstitutional. This decision, *Washakie v. Herschler*[134] was conceptually very similar to the original *Rodriguez* decision. The distribution formula was based on a system of teacher units. Each teacher unit received $21,300 for districts classified as small. Every twenty-five students constituted a teacher unit. State funds were then distributed based on local wealth. Assessed valuations reflected wealth ratios from the wealthier school districts to the least wealthy school districts at a ratio of twenty-one to one. The court utilized a strict scrutiny standard in view of the constitutional language that stated, "the legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every kind and grade . . . ."[135] The court ruled that the distribution system failed to afford equal protection under the state constitution. Plaintiffs were able to demonstrate that property poor school districts reflected a consistent pattern of less revenues and thus less expenditures than property rich school districts. The court judged education to be a fundamental interest. Thus, the state aid mechanism needed to reflect the wealth of the state as a whole. Additionally, the court concluded that capital outlay revenues had to be equitably distributed. The court also ruled that the issue was timely in that the defendant had argued that the controversy was not ripe for the court to adjudicate for a recapture provision from the wealthier school districts.

In 1981 the Georgia Supreme Court ruled on a declaratory judgment in upholding the state's education finance system in *McDaniel v.*

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[133] 399 A.2d 360 (Pa. 1979).

[134] Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, *cert. denied sub. nom.*, Hot Springs County Sch. Dist. v. Washakie, 449 U.S. 824, 101 S. Ct. 86 (1980).

[135] Wyo. Const. art. VII, § 1.

Thomas.[136] The Georgia distribution formula was based on an "Adequate Program for Education in Georgia" (APEG). This reflected cost calculations for thirteen items for each school district. Data revealed that the greatest predictor of the APEG was classroom teacher salaries. The APEG was then weighed against the required local effort (RLE) being subtracted from the APEG index in order to determine the state share. The RLE was a proportional share of the equalized adjusted assessed valuation multiplied by a total state wide local effort index. The court ruled that the formula was rational in relationship to the purpose of the state for providing basic education funding. Thus, it was not in violation of the state's equal protection clause. The court noted that local school districts could go beyond the basic program and the state was not under an obligation to equalize educational opportunities among all the school districts of the state.

In *Lujan v. Colorado*[137] the state supreme court reversed the trial court in holding the state's system constitutional. The state was able to successfully argue that local control of public education was a valid public policy with legitimate state interests. The Colorado formula was primarily based on an authorized revenue base (ARB) with a specific maximum allowable amount that a school district could expend for general operating expenses. The ARB was generally adjusted upward based on the previous year's expenses. Regardless of the school district's wealth, all school districts received an equalized payment of $35 per mill per pupil. Operationally, the formula guaranteed each school district either the state share or the minimum guarantee, whichever was greater. The court noted that the constitutional mandate for thorough and uniform system of free public education was not a mandate for absolute equality in educational services or expenditures. Specifically addressing capital outlay, the court held that mill levy restrictions as well as other assessment levies, were rationally related to legitimate state purposes.

In 1983, *Hornbeck v. Somerset*[138] challenged the Maryland distribution program based on the disparities in taxable wealth among the school districts of the state. The distribution formula applied to the basic current expenses for school districts was an amount equal to $690 multiplied by the enrollment of the school district. The figure was contingent upon a school district levy equal to the product of the wealth of the county and a uniform percentage determined for each fiscal year by the state for each school district. Thus, each district had a different levy. Those districts that had less wealth received greater state moneys. The foundation amount, which was the minimal amount required by law, was supported by the state in the amount of 55%. Those moneys expended above the foundation amount were supported with 50% state aid. State enrollment was multiplied by $624 and then the product was multiplied by .45 resulting in basic aid for all school districts. Next, the total enrollment of the state was then multiplied by $66 and then multiplied by .50 and divided by the total wealth of all school districts. This resulted in a uniform tax rate that was applied to all counties in order to raise the local share. As a result, the plaintiffs argued, wealthier school districts could raise greater moneys from the uniform rate than less wealthier counties. Each district could levy above the minimum with no penalty or negative effect by the state. Additionally, the state supported density aid in the amount of $100 per student for certain school districts above specified density levels. In reality, only the City of Baltimore qualified for this aid. The state provided virtually full funding for various categories. The lengthy complaint argued that the distribution formula required poorer school districts to raise higher taxes in order to support approximately two-thirds of the total expenditures. Further, poor children required greater educational services unaccounted for in the formula. Plaintiffs argued that nearly 70% of the poorest children of the state resided in fiscally distressed school districts that exhibited every facet of municipal overburden and financial inadequacy. The court of appeals vacated a decree of unconstitutionality and held that the system of distributing state aid to the school districts was constitutional. The court held that equalized expenditures were not required under the state constitution as long as no child was disadvantaged or harmed. The court stated that poor school districts were not a suspect class and thus the students could not have a fundamental right to an education. The distribution formula could only be declared invalid "if the means chosen by the legislature [were] irrelevant to the achievement of the State's objective."[139] After an exhaustive analysis of the historical setting of this controlling language in the constitution, the court noted that, based on the historical evidence, the words "thorough and efficient" were not the equivalent of "uniform."[140] The constitutional mandate did not require exact equality of funding and expenditures. It required a thorough and efficient system of free public education and the maintenance of public education via a public taxing system. Thus, the court ruled that the Maryland system was not in violation of the equal protection clauses of the state constitution. The court noted in its opinion a philosophical perspective on this type of suit. The court stated:

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[136] 285 S.E.2d 156 (Ga. 1981).

[137] 649 P.2d 1005 (Colo. 1982).

[138] Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (1983).

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[139] *Id.* at 782.

[140] *Id.* at 776.

> The central role of education in our society is, of course, universally accepted . . . . [T]he issue in cases challenging the constitutionality of state public school finance system is not whether education is of primary rank in the hierarchy of societal values, for all recognize and support the principle that it is. Nor is the issue whether there are great disparities in educational opportunities among the State's school districts, for the existence of this state of affairs is widely recognized. Neither is the issue in this case whether it is desirable . . . that the same mathematically precise amount of money should be spent on each child's public school education, without regard to the wealth of the subdivision in which the student reside. The issue is whether anything in the constitution, state or federal, requires such a result or prohibits in any county, regardless of wealth, from spending any more. . . . Otherwise stated, it is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation. The quantity and quality of educational opportunities to be made available to the State's public school children are a determination committed to the legislature or the people of Maryland through adoption of an appropriate amendment to the State Constitution.[141]

In *Dupree v. Alma*[142] the Arkansas court ruled that education was not a fundamental right under the Arkansas Constitution. Thus, the state's equal protection clause did not subject the state's distribution formula to an examination based on strict scrutiny. However, the court did refuse to accept that students were not harmed by the reliance on minimum funds and a heavy reliance on local taxes. Thus, the state distribution plan was found to violate the state's equal protection clause on a rational relationship examination. Further, the court ruled that the constitutional requirement to provide a suitable and efficient system of schools had not been met. The court was persuaded by the plaintiffs' analysis of the distribution formula. The plaintiffs showed that through various hold harmless provisions, the system was inequitable. Further, the plaintiffs' methodology demonstrated vast disparities concerning expenditures as well as educational opportunities. Specifically, the plaintiffs were able to demonstrate that only 7% of the students resided in school districts with over $1,500 per pupil total revenues as contrasted with 21% of the state students residing in school districts with less than $1,100 per pupil revenues. In fact, the plaintiffs' methodology reflected that the state aid formula increased the disparity of funds available to local school districts.

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[141] *Id.* at 790.

[142] Dupree v. Alma Sch. Dist. No. 30, 651 S.W. 2d 90 (Ark. 1983).

In 1980, the West Virginia case of *Pauley v. Kelly*[143] was brought before the court charging that the state aid formula was in violation of the "thorough and efficient" clause of the state constitution as well as the state equal protection clause. The case, dismissed by the circuit court, was appealed to the state supreme court. The state supreme court found that the state aid distribution formula violated both the thorough and efficient clause as well as the equal protection clause of the state constitution. The court order was specific and lengthy allowing what would constitute equal educational programs. The case was remanded to the circuit court to oversee the formulation of a master plan addressing the issues of thoroughness and efficiency and requiring equalization of personnel, facilities, curriculum, materials, and equipment. This plan was to ensure programmatic equity throughout the school districts in the state. In 1984, *Pauley v. Bailey*[144] came before the courts in order to force the state to comply with the previous court decision. The court ordered compliance, but no timetable was specified.

The distribution of state revenue was again litigated in the courts of Michigan in 1984 when the plaintiffs in *East Jackson Public Schools v. State*[145] argued that the distribution formula produced unequal per-student funding among the school districts and thus was unconstitutional. The plaintiffs consisted of twenty school districts with a student from each district. This suit was different from the original *Milliken* suit in that the state distribution formula had been changed. Nonetheless, local school districts relied on local property taxes for much of total expenditures necessary to run the public schools. The plaintiffs pointed out that a heavy reliance on local wealth existed within the formula and that several school districts were 'out of formula' in that these districts received no state aid and relied entirely on local property wealth. Likewise, other school districts totally relying on state aid could not offer the same expenditures as those districts that functioned 'out of formula.' Data analysis revealed that the present system was less disparate than the previous system as litigated under *Milliken*. The plaintiffs claimed that unequal funding per pupil existed within the school districts of the state. Testimony also revealed that no student had been denied a basic educational opportunity. Further, data revealed that no school district within the state failed to offer an adequate education as measured by a variety of standards. The court of appeals utilizing the original logic of *Milliken*, held the distribution formula was constitutional and that public education was not a fundamental right under the state constitution and that the statutory financing scheme did not deny equal protection to students. The court further reasoned that the state's obligation to provide a system of public education was not synonymous with an obligation to provide equal per-pupil funding between districts. An important additional notation was the court's opinion that while students had standing, the school districts did not have standing to raise the constitutional issues involved in the challenge. The court was of the view that the plaintiff school districts could not seek these rights. The school districts were attempting to compel the courts to overturn the system in order to enact a completely different and new system of distribution. Specifically the court held:

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[143] Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979).

[144] Pauley v. Bailey, 324 S.E.2d 128 (W. Va. 1984).

[145] 348 N.W.2d 303 (Mich. 1984).

> School districts and other municipal corporations are creatures of the state. Except as provided by the state, they have no existence, no functions, no rights and no powers. They are given no power, nor can any be implied, to defy their creator over the terms of their existence. They surely have no power to bring suits of such nature on behalf of residents within their boundaries, or to expend public funds to finance such litigation of, or on behalf of, private citizens.[146]

While standing is generally not a useful defense as described, herein there are instances in which this defense has proven to be persuasive.[147] At this point, suffice it to say that this is generally one of the standard defenses that a state utilizes early on in the proceedings.[148]

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[146] *East Jackson Pub. Sch.*, 348 N.W.2d at 306.

[147] *See, e.g.*, Christensen v. Graham, Dist. Ct. of App., Case No. 88-69 (Fla.).

[148] For a rather complete discussion of standing *see* Board of Educ. v. Walter, 58 Ohio St. 2d 368, 390 N.E.2d 813, at 826 (1979).

Later Reform Cases

In 1987 plaintiffs contended in *Britt v. North Carolina*[149] that the distribution formula violated the general and uniform clause and the equal opportunities provision of the state constitution. The appellate court opined that the framers of the state constitution intended to have students possess equal access to the public schools without regard to the factors of race and to have a fundamental right to elementary and secondary education. The court further stated that this did not mean that each student within the North Carolina system was guaranteed a fundamental right to public education that was equivalent to that received of every other student in the state.

The South Carolina distribution formula was challenged in *Richland County v. Campbell* in 1988.[150] Plaintiffs had argued that the vast disparities as created by the formula were in violation of the state constitution. The state supreme court noted that the distribution formula considered the individual wealth of each school district and that the state constitution did not require the legislature to 'pay' for the cost of providing the total educational program.

In *Kirby v. Edgewood*[151] the Supreme Court of Texas overturned the appellate court in ruling that education was a fundamental right. Evidence reflected that the State of Texas utilized a foundation formula that was insufficiently funded to ensure minimal educational opportunities throughout the state. The Texas Constitution required a uniform delivery of educational opportunity, and education was regarded as a fundamental right. Evidence revealed that over one-third of all school districts had insufficient moneys to offer adequate programs. The state legislature attempted to design an education finance formula that would prove to be acceptable to the court within court-imposed timelines. This legislation was challenged in 1995 in the form of compliance litigation with *Edgewood v. Meno*[152] in which the Texas Supreme Court ruled that efficiency was not synonymous with equity at all levels of funding within the state. Further, the court ruled that the new formula met the state constitutional requirements in that, when the overall formula was viewed as a whole, it did not effectively impose statewide ad valorem taxes in violation of the constitution.

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[149] Britt v. North Carolina State Bd. of Educ., 357 S.E.2d 432 (1987).

[150] Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988).

[151] Kirby v. Edgewood Indep. Sch. Dist., 761 S.W. 2d 859 (Tex. 1988).

[152] 893 S.W.2d 450 (Tex. 1995). For a complete discussion of the Texas litigation *see* W. E. Sparkman & F. Hartmeister, *The Edgewood Saga Continues: The Texas School Finance System is Constitutional-but Not out of the Woods*, 101 Educ L. Rep. [509] (Sept. 7, 1995).

The uniformity of a minimal standard was accepted by the State Supreme Court of Wisconsin in *Kukor v. Grover.*[153] The court recognized that education, to a certain degree, was a fundamental right but chose to apply a rational basis standard in that the plaintiffs had failed to prove or allege a complete denial of educational opportunity within the state.

In Kentucky, the state supreme court in *Rose v. Council*[154] ruled on behalf of the plaintiffs. The plaintiffs were successful in their arguments that the system of common schools was not efficient. The court ruled that education in Kentucky was a fundamental right. As such, this fundamental right could not be met when the state education system was so significantly underfunded and inadequate. Further, the inequalities were pervasive throughout the 177 districts as the educational offerings throughout the state were overwhelmingly nonuniform. The decision called for the complete overhaul of the entire public elementary and secondary system in the Commonwealth of Kentucky.

In 1990, the New Jersey Supreme Court ruled that the entire public education finance system was unconstitutional in *Abbott v. Burke*.[155] *Abbott* was sixteen years after *Robinson v. Cahill*.[156] Abbott declared that the system was unconstitutional, as the distribution formula did not meet the needs of poor urban districts of the state. Further the court ruled that the distribution formula was not fiscally neutral. Additionally, the thorough and efficient clause of the state constitution was not met. The plaintiffs had carefully constructed their complaint so as only the poorest of school districts should be brought up to the wealth and expenditure levels and thus the total curriculum of the wealthiest of the school districts. Hence, plaintiffs were able to narrowly confine the issue before the court. Technically, the plaintiffs did not ask for the court to overturn the entire system; they merely asked that the poorest school districts be made equal to the wealthiest school districts. Operationally, in order to engage in this action the entire distribution system would have to be redesigned. This strategy also made the quantitative and qualitative comparisons much easier to demonstrate before the court. In fact, *Abbott* also demonstrated where the plaintiffs were able to argue that the formula, as it applied to the plaintiff school districts, actually harmed children in relationship to students in other school districts. Plaintiffs were able to demonstrate the quantitative and qualitative differences available to children in the wealthiest and poorest school districts of the state. Specifically regarding the *Abbott* methodology, relative disparity has had limited success while absolute disparity would offer significant hope for plaintiffs. Generally, plaintiffs hope to demonstrate that relative disparity is in fact so great, that it is in reality absolute given the hopelessness of the situation, particularly as it applies to the inner cities of many states. Thus, the *Abbott* methodology proved in this one instance to be highly successful. The *Abbott* strategy potentially holds significant promise to plaintiffs in other states. Further, in *Abbott* the supreme court noted that viable and substantive educational criterion existed to measure the educational content in every school district. The court stated:

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[153] Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989).

[154] Rose v. Council for Better Educ., 790 S.W. 2d 186 (Ky. 1989).

[155] Abbott v. Burke, 575 A.2d 359 (N.J. 1990).

[156] Robinson v. Cahill, 287 A.2d 187 (N.J. Super. L. 1972), *aff'd*, 303 A.2d 273 (N. J. 1973).

> The proof of substantive educational content has several sources. The Act itself, the rules and regulations of the board and the Commissioner, the Commissioner's implementing actions, and the evidence of the education that actually takes place in the district–through curriculum plans, course offerings, studies, reports, valuations, and observations. The proofs differentiate this case from *Robinson I*.[157]

The court in its unanimous opinion wrote: "From this record we find that certain poorer urban districts do not provide a thorough and efficient education to their students. . . . We find the constitutional failure clear, severe, extensive and of long duration."[158]

Abbott v. Burke clearly indicated that the emphasis of the court on the provision of equal programs to students throughout the entire state was the primary concern in assessing the equity of the state education finance plan. The legislature passed the Quality Education Act of 1990 raising income and sales taxes for an additional $1.1 billion. This tax increase was not politically acceptable by the populace and was soon replaced by less significant tax increases. In 1994, the New Jersey Supreme Court declared that the Quality Education Act (QEA)was unconstitutional. The court declared that the QEA was unconstitutional in that it failed to assure parity of regular education expenditures between special needs districts and wealthier districts.[159]

The State of Montana has had a long history of litigation involving the education funding distribution formula dating from the early 1970s.[160]

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[157] *Abbott*, at 389-390.

[158] *Abbott*, at 408.

[159] 643 A.2d 575.

[160] *See* Woodahl v. Straub, 520 P.2d 776 (1974).

More recently, in *Helena Elementary School District v. State of Montana*[161] the Montana Supreme Court ruled the distribution formula was unconstitutional in that wide disparities led to unequal educational opportunity. At the time of this second edition, two suits continue, involving the operationalization of the supreme court suit as well as the distribution formula to small and rural districts within the state.[162]

In a recent case from Oregon, *Coalition for Equitable School Funding v. State*[163] the plaintiffs argued that the lack of uniformity was in conflict with the state constitution. The plaintiffs argued that all state mandates had to be funded by state aid as well as equal funding on a per-pupil basis. The Oregon Supreme Court rejected the plaintiffs' contentions inasmuch that the constitution and statutes allowed local school districts to utilize local property levies to meet any state standards in determining appropriate per-pupil expenditures.

In Kansas, the supreme court issued a complex ruling in four consolidated cases which represented ninety-seven plaintiffs that challenged the School District Finance and Quality Performance Act.[164] The court affirmed in part, reversed in part, and remanded with directions. The court upheld the overall formula while striking down the low enrollment provision of the statutory act. The United States Supreme Court denied a writ of certiorari in June of 1995.[165]

The Nebraska Supreme Court upheld the distributional formula in *Gould v. Orr*[166] in 1993. The Supreme Court ruled that the plaintiffs failed to state a cause of action in that they failed to demonstrate that unequal funding affect the quality of education being offered in the state. The court specifically stated:

> In this case, appellants failed to state facts sufficient to state a cause of action. Appellants' petition clearly claims there is a disparity in funding among school districts, but does not specifically allege any assertion that such disparity in funding is inadequate and results in inadequate schooling. While appellants' petition is re-

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[161] Helena Elementary Sch. Dist. v. State of Montana, 769 P.2d 684 (1990).

[162] Montana Rural Educ. Ass'n v. State, BDV-91-2065 (Mont. 1st Jud. Dist., Lewis and Clark County); Helena Elementary Sch. Dist. v. State, BDV-91-1334 (Mont. 1st Jud. Dist., Lewis and Clark County).

[163] 811 P.2d 116 (1991). *See also The Implications of Coalition for Equitable School Funding v. State for the Future of Public School Finance Reform Litigation*, 69 Educ. L. Rep. 1009-1022 (1992).

[164] Unified Sch. Dist. v. State, 885 P.2d 1170.

[165] Unified Sch. Dist. v. Kansas, 115 S. Ct. 2585 (June 19, 1995).

[166] 506 N.W.2d 349 (Neb. 1993).

> plete with examples of disparity among the various school districts in Nebraska, they fail to allege in their petition how these disparities affect the quality of education the students are receiving. . . . [A]though appellants' petition alleges the system of funding is unequal, there is no demonstration that the education each student is receiving does not meet constitutional requirements.[167]

In *Tennessee Small School System v. McWherter*,[168] first heard by the Tennessee Supreme Court in 1993, the court reversed the appellate court in declaring the state distributional formula to be unconstitutional. The court found that the distributional formula violated the equal protection clause of the Tennessee Constitution.[169] The court noted that "[t]he essential issues in this case are quality and equality of education."[170] The court opined:

> In describing the constitutional relationship between the state and local government and their respective powers, the defendants have stated well the reason local control is no justification for a system that discriminates on the happenstance of residence. But, as we have previously noted, the legislative flexibility mentioned in the defendants' rationale does not extend to using the inability or indifference of local government to excuse a duty specifically imposed upon the General Assembly by the constitution.[171]

The Supreme Court in Tennessee recently noted in compliance litigation that the substantial improvement in educational opportunities had arisen as a result of the state's response and that the legislative mandates could best be accomplished in an incremental fashion. Further, the state response referred to as the Basic Education Program must include substantial equalization of teachers' salaries according to the formulas as contained in the legislation.[172]

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[167] *Id.* at 353.

[168] 851 S.W.2d 139 (Tenn. 1993).

[169] The trial court dismissed the plaintiffs' action under the Fourteenth Amendment. No appeal was filed over this action. The supreme court in finding for the plaintiffs under the equal protection clause under the state constitution never addressed whether the distributional formula violated the education clause of the state constitution.

[170] *Tennessee* at 156.

[171] *Tennessee* at 156.

In *Alabama Coalition for Equity v. Hunt*[173] the trial court ruled for the plaintiffs. Subsequently, the state supreme court[174] in reacting to a senate resolution requested an advisory opinion as to whether the senate had to comply with the circuit court order ruled that the legislature had to comply with the circuit court order.

In Missouri, the trial court[175] declared the distributional formula to be unconstitutional as to its reliance on the property tax. Specifically, the trial court stated that the distributional formula failed to meet the constitutional burden of a free public education as well as the equal protection clause of the state constitution. Technically, the trial court's opinion only directed the state legislature to provide "adequate funds." The opinion did not direct the legislature to change the distribution formula. All other issues were held in reserve for a later decision as to the questions of whether the then current levels would meet constitutional requirements. On remand the state supreme court noted that the multiple appeals and cross appeals from all the parties in this consolidated case were profoundly complicated in that the vast majority of the legal issues were not settled by the trial court. Thus, no final judgments could be made by the state supreme court. The supreme court noted that "[b]y withholding ruling on part of a claim, questions are left open which, upon full adjudication of the claim by a trial court, may make the order . . . moot or which, when fully decided, may even change the identity of aggrieved parties."[176] However, the court clearly stated that its judgment was not addressing the constitutionality of the distribution formula.

In a most unique case, the Massachusetts Supreme Court in *McDuffy v. Secretary of the Executive Office of Education*,[177] ruled that the distributional formula was not adequate and thus failed to meet the state constitutional obligation. The case consisted of largely anecdotal accounts of curricular weaknesses that existed within certain selected school districts. The uniqueness of this case was demonstrated in that virtually no empirical evidence was presented by either party, thus no generalizable research was before the courts. The court largely relied on individual testimony presented by fact witnesses, special interest groups, and nongeneralizable observations. In fact, the state stipulated that the districts in question did not offer the same opportunities that were found in other school districts in Massachusetts. In the lengthy opinion the state supreme court struck down the distributional formula without examining the distribution formula, only the educational deficiencies that existed within certain school districts.

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[172] Tennessee Small Sch. Sys. v. McWherter, 894 S.W.2d 734 (Tenn. 1995).

[173] 1993 WL 204083.

[174] Opinion of Justices No. 338, 624 So. 2d 107 (Ala. Cir.).

[175] Committee for Educ. Equality v. Missouri, 878 S.W.2d 446.

[176] *Id.* at 451.

[177] 615 N.E.2d 516 (Mass. 1993).

The Supreme Court of New Hampshire reversed and remanded on appeal from the trial court in *Claremont v. Governor* stating that the state had a duty to provide an adequate education throughout the state.[178] The encouragement of a literature clause of the state constitution imposed a duty on the state to provide a constitutionally adequate education throughout the state of New Hampshire. The case was remanded for a determination regarding adequacy.

The Rhode Island Supreme Court heard three consolidated cases in *City of Pawtucket v. Sundlun.*[179] The Rhode Island trial court upheld the plaintiffs' claims in ruling that the distribution formula was not constitutional in that students had the right to an equal, adequate, and meaningful education. The trial court ruled that students of the state had a fundamental right for a uniform education. On appeal, the state supreme court upheld the distribution formula. It ruled that the distribution formula did not violate the education clause or the equal protection clause of the state constitution. In fact, the supreme court examined at great length the plaintiffs' philosophical arguments based on Jeffersonian concepts. The court rejected these philosophical views noting among other things, that the plaintiffs had been overly broad in their interpretations and far to expansive in the interpretations and applications of these concepts. Specifically, the court noted in its summary:

> . . . we are led to conclude that a complex problem involving the allocation of statewide resources is not a proper arena for judicial determination. Rather, the legislative and the executive offices have the responsibility to allocate limited and often scarce resources among the virtually unlimited needs and demands not only to support education but also to care for the sick, to support the poor, to maintain our highways, to provide for the safety of our citizens, and numerous other demands. A judge accustomed to the constraints implicit in ad-

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[178] Claremont Sch. Dist. v. Governor, 635 A.2d 1375.

[179] 662 A.2d 40 (R.I. 1995).

> versary litigation cannot feasibly by judicial mandate interfere with this delicate balance without creating chaos.[180]

The state prevailed in Minnesota in that the supreme court upheld the finance distributional formula. In *Skeen v. State*,[181] the supreme court ruled that only an adequate level of education was required and that the state had shown that all school districts met all state standards. In doing so it reversed the trial courts ruling that the state's referendum levy, debt service levy, and certain other components of the school aid distributional formula were flawed. Several interesting and perhaps unique arguments were presented to the court. Outcome measures for Minnesota students reflected relatively high percentages of students continuing with some type of formal education as compared to most states. Further evidence revealed that Minnesota's long standing open enrollment plan reflected that plaintiff districts did not lose students to other school districts.

In Virginia, the plaintiffs alleged that "substantial inequality" was created by the distributional formula. The plaintiffs lost at every level concluding with the state supreme court ruling there was no state constitutional requirement that education must be uniform or substantially equal.[182] Specifically the state supreme court opined:

> In sum, we agree with the trial court that education is a fundamental right under the Constitution. Even applying a strict scrutiny test, as urged by the [plaintiffs], however, we hold that nowhere does the Constitution require equal, or substantially equal, funding or programs among and within the Commonwealth's school divisions.[183]

In North Dakota, in a somewhat unique and lengthy ruling, the supreme court in *Bismark v. State*[184] ruled that the funding formula was unconstitutional. However, the North Dakota Constitution requires four members of the supreme court to declare a statute unconstitutional. Thus the plurality of three votes was insufficient to overturn an issue as unconstitutional. The plurality opinion noted that the usage of ad valorem taxes did not bear a necessary close correspondence to the goals of providing equal educational opportunity.

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[180] *Id* at 63.

[181] 505 N.W.2d 299 (Minn. 1993).

[182] Scott v. Commonwealth, 443 S.E.2d 138 (Va. 1994).

[183] *Id*. at 142.

[184] 511 N.W.2d 247 (N.D. 1994).

In 1994, the plaintiffs suffered a stunning defeat as the South Dakota trial court upheld every aspect of the state's defense in firmly rejecting all plaintiffs claims.[185] In a relatively poor state, with wide variations of per-pupil spending, the court was convinced that the plaintiffs failed to establish that the variations were due to any illegitimate variables. In fact, the state defendants were able to prove, to every quantitative and qualitative argument, that the variations that did exist were based on legitimate variations, as opposed to illegitimate variations.[186]

Recently in Idaho, the plaintiffs and the state agreed to dismiss all claims of the plaintiffs in that the legislature had significantly changed certain aspects of the distributional formula.[187] The parties agreed that the changes to the distributional formula would end the controversy.[188]

Certain cases are tangential to education finance distribution formula as illustrated in *Alaska in Matanuska-Susitna v. Alaska* wherein the court upheld various tax limitation and revenue sharing[189] formulas that impacted the ability of local school districts to raise local revenues. Another case that illustrates this concept can be found in *Exira v. Iowa*[190] in which the court upheld the distributional formula regarding open enrollment plans. Michigan has had a long history of issues that have revolved around the manner of state aid.[191] Similarly, the Supreme Court of Arkansas[192] addressed the issue of overpayments under the Minimum Foundation Program Aid program. The state recoupment of overpayments by the reduction of state aid payments in subsequent years did not violate the state constitution against the appropriation of school taxes for any other purpose or to any other school district than that for which it was levied.

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[185] Bezdichek v. State (Civ. No. 91-209).

[186] *See* D. C. Thompson, R. C. Wood, & M. D. Miller, Findings of Fact and Opinion on the Equity and Fiscal Neutrality of South Dakota's State Aid Formula to Public Schools: Expert Analysis on Behalf of the State in Bezdichek v. State of South Dakota, Technical Report to the Attorney General of the State of S.D., 1993 (Wood, Thompson & Assoc., Inc. 1994).

[187] Stipulation and motion between *Frazier* plaintiffs and defendants State of Idaho and Idaho Legislature, Case No. 93882, Dist. Ct. Fourth Judicial Dist. Ada County, July 1994, *see* 850 P.2D 724, *reh'g denied*, May 1993.

[188] Session Laws, ch. 428 and 440 (1994).

[189] 726 P.2d 166.

[190] Exira Sch. Dist. v. Iowa, 512 N.W.2d 787, 1994 WL 54082 (Iowa 1994) No. 93-194 (Feb. 23, 1994).

[191] The case of Durant v. State has existed in some form since at least 1982, *see* 513 N.W.2d 195 *appeal denied*; 519 NW.2d 898, and 522 N.W.2d 633 *remanded*, Aug. 1994). *See also* Hamtramack Sch. Dist. Bd. of Educ. v. Attorney Gen., *aff'd* by Mich. Ct. of App. in an unreported opinion dated Dec. 11, 1992 (Doc. No. 130580, *appeal denied*.

[192] Fayetteville Sch. Dist. v. Arkansas State Bd. of Educ., 852 S.W.2d 122.

Indiana plaintiff school corporations withdrew their suit against the state in 1990. The suit alleged that the distributional formula did not meet the equity or adequacy standards necessary to meet the state constitutional requirements.[193]

The Arizona Supreme Court overturned the distributional formula as unconstitutional in a three to two decision in *Roosevelt v. Bishop* in 1994.[194] The court ruled that the statutory financing scheme was itself the cause of gross disparities and in violation of the general and uniform requirement of the state constitution. The plaintiffs had argued the unconstitutionality of the manner of funding capital outlay.[195] The majority opinion stated:

> In short, the system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities. There is nothing unconstitutional about creating school districts. But if they produce a school system that cannot be said to be general and uniform throughout the state, then the laws chosen by the legislature to implement its constitutional obligation under [the constitution] fail in their purpose.[196]

The Illinois courts have upheld the distribution formula in that the trial court ruled that the state constitution did not require equal educational opportunities. The trial court and appellate court both ruled that the equal protection clause was not violated when the educational services were not identical in all school districts.[197]

In a trial court decision of July 1994, the court upheld the Oregon phased implementation of equal spending per pupil. In *Withers v. State of Oregon*[198] the court rejected all of the plaintiffs' contentions regarding the manner in which the state distributed moneys. In March 1995, the court of appeals issued its ruling in which it affirmed the trial court. The court noted that the funding formula did not violate the state constitution as it provided for a minimum of educational opportunities and school districts were allowed to exercise control over what they desired in terms of educational programs. This case represents the third time that the Oregon appellate courts have rejected a challenge to the state distributional formula.

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[193] Lake Central v. Van Noort, 549 N.E.2d 420 (1990). *See also* Perry v. State 49A02-8906-CR-273, Ct. of App., Sec. Dist. 1-25-90. The suit was dropped with a possibility for refiling.

[194] 877 P.2d 806 (1994).

[195] *See* D. C. Thompson, & R. C. Wood, Analysis for Plaintiffs: Roosevelt Elementary School District v. C. Diane Bishop, a technical report to the plaintiffs in action before the court, 1992 (Wood, Thompson & Assoc., Inc.).

[196] *Roosevelt* at 815.

[197] The Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 128, 641 N.E.2d 602, *reh'g denied* (1994). *See also* Jenkins v. Leininger, Ill App. Ct. First Dist., No. 93-1456.

[198] 891 P.2d 675; 896 P.2d 1213.

In Maine the plaintiffs lost at the trial and appellate level regarding the manner in which the distributional formula reduced funds to certain school districts. The supreme court ruled that the funding reductions to certain school districts did not violate the equal protection clause as the statutory scheme was rationally related to a state purpose. The court noted that a rational standard had been met by the legislature. Further the court ruled that the constitution did not require any particular funding scheme.[199]

A series of cases in New York have recently addressed the issues of financing public education. One trial court ruled[200] that school districts lacked standing to sue the state over the alleged unconstitutionality of the distribution formula. The court did note that state acts may be challenged in certain instances by municipalities where it could be established that it would require the municipality to violate constitutional proscriptions. The court further ruled that although minority children comprised eighty-one percent of the city's public school students, there were no claims that the alleged inequality in funding was the result of a deliberate discrimination as required for a strict scrutiny standard to be imposed. Other claims were dismissed due to the failure of the plaintiffs to state a cause of action. In another case, the court of appeals ruled that the plaintiffs did not demonstrate "gross and glaring inadequacy" and did not violate the state constitutional obligation to provide free common schools.[201]

Recently, the Wyoming Supreme Court overturned the state distribution formula in upholding the plaintiffs' challenges to the manner in which state aid and the recapture moneys were distributed. The plaintiffs had argued that the distribution formula had, in fact, increased the disparity since the supreme court had ruled on this issue in the early 1980s. The court noted that the state failed to demonstrate the rationality of the formula or its adequacy for the education of individual children. Specifically, the court found that the use of the state divisor and the capital construction features failed in meeting the state constitutional mandate.[202]

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[199] School Admin. Dist. v. Commissioner, 659 A.2d 854. *See also* McBreairty v. Commissioner of Admin. & Fin. Serv., 663 A.2d 50 (1995).

[200] Campaign for Fiscal Equity v. State, 616 N.Y.S.2d 851. For a parallel case challenging New York higher education *see* Weinbaum v. Cuomo, ___ N.Y.S.2d ___. 1995 WL 580051 (N.Y. A.D. 1 Dept.).

[201] R.E.F.I.T. v. Cuomo, 631 N.Y.S.2d 551 (Ct. App. 1995).

[202] Campbell County Sch. Dist. v. State, ___P.2d ___, 1995 WL 654524 (Wyo.).

At the time of this writing an Ohio Appeals Court has upheld the overall distribution formula by a vote of two-to-one. The decision is presently under appeal to the state supreme court. The appellate decision overturned the trial court in noting that the proper forum for such issues would be the General Assembly. The majority opinion stated that the present distributional formula guaranteed that basic standards were met. The appellate court noted that the trial court erred in viewing Walter as not controlling. The issue of insufficient funds could only be decided by the General Assembly.[203] The trial court was reversed and remanded in part.

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[203] Thompson v. State, Ct. of C.P., Perry County Case No. 21752; Howard v. State, Case No. 21752, Ct. of C.P., Perry County consolidated DeRolph v. Corrigan, 620 N.E.2d 850, 1995 WL 557316 (Ohio App. 5 Dist.).

CHAPTER 9

PRESENT STRATEGIES AND LAWSUITS

Analysis of Litigation Strategies

As a broad generalization, plaintiffs do not seek perfect equality-based public education finance systems. Such a system is traditionally defined as assuming that all students, as well as school districts, are equal and therefore, by definition, this concept attempts to achieve an equivalent amount of state/local moneys for each student. This concept does not necessarily meet the definition of equity. Equal expenditures per pupil do not create an education finance distribution formula that is equitable. Equity is the concept that districts and students are not equal. Thus, this inequality demands that students and school districts be treated in different fashions in order to achieve justice and fairness.

The federal courts present unique and often insurmountable challenges to plaintiff concerns. If plaintiffs were to show that a suspect class were significantly harmed, then successful litigation in the federal courts may be enhanced. Suspect classifications such as race, religion, and sex, would be extremely difficult to statistically prove in an education finance suit in that finance distribution formulas are largely enrollment driven. Issues such as race, religion, and sex are not factors in traditional education finance formula variables. However, if it were to be shown that poorer school districts were largely minority in composition compared to wealthier school districts, then the issue of suspect classification could be raised by plaintiffs. These suspect classifications are, however, generally distributed among all school districts. Again, it must be noted that poverty is not a suspect classification.

On the federal level if heightened scrutiny were to be afforded, in limited situations, it could be argued that lack of a quality education is harmful to individuals in freedom of expression, e.g., voting.[204] The authors note that this argument would be highly improbable to statistically demonstrate given the variety of variables involved in the issue. Additionally, it would take an active judiciary with a far-reaching perspective of the benefits of public schooling.

On the state level, plaintiffs' arguments find much more fertile ground. Generally, plaintiffs base their arguments on either or both the equal protection clause of the state constitution or the state education clause. Both sets of state constitutional language are shown in the appendix. Obviously, the diversity of language, along with the variations of emphasis found within state constitutions, offers both a wide array of approaches and a wide array of possible judicial interpretations. State constitutions may offer substantive rights that are far more reaching than the Federal Constitution. As a result, state courts have developed interpretive tools different than those which have proven to be appropriate to the Federal Constitution.[205]

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[204] For the interpretation of this concept *see* D. C. THOMPSON & R. C. WOOD, ANALYSIS FOR PLAINTIFFS: ROOSEVELT ELEMENTARY SCHOOL DIST., C. DIANE BISHOP. (Wood, Thompson & Assoc., Inc. 1992).

In 1989, Thro developed a classification scheme of state constitutional language.[206] His Category I states reflected clauses that impose a minimum educational obligation on the state legislature. These states have generally not provided fertile ground for plaintiffs.[207] Category II states are those that exhibit greater state obligations and state that public education must meet certain minimal standards such as thorough and efficient.[208] Thro notes that certain successes for plaintiffs have occurred within these states' constitutional provisions. Category II exhibits a history that reflects that these states have proven ripe for challenge by plaintiffs.[209] Category III states are those states that exhibit stronger and more specific language.[210] Several of these states are engaged in education finance litigation. Category IV states are those that exhibit clauses that provide for education as a fundamental right.[211]

The concept of thorough and efficient has been litigated in a number of cases in different states. Courts have differed significantly in their definition as well as their operational applicability to the public schools and are thus the test of these meanings. For example, in *Robinson I* the court stated that if such a standard were to exist, then the end product must meet the state constitution's language. Thus, by definition, a system of instruction in any district within the state which is not thorough and efficient fails the constitutional test. Further, regardless of the reasons for failure, the state has the obligation to rectify the constitutional violation.

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[205] *The Interpretation of State Constitutional Rights*, 95 HARV. L. REV. 1324, 1353 (1982).

[206] *See* W. E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639 (1989).

[207] Category I includes Ala., Ariz., Conn., Haw., Kan., La., Neb., N.M., N.Y., N.C., Okla., S.C., Utah, and Vt.

[208] Category II includes Ark., Colo., Del., Fla., Idaho, Ky., Md., Minn., Mont., N.J., N.D., Ohio, Or., Pa., Tenn., Tex., Va., W.Va., and Wis.

[209] *See, e.g., Robinson*, 287 A.2d 187; *Rose*, 790 S.W.2d 186; *Helena*, 769 P.2d 684; *Edgewood*, 761 S.W.2d 859.

[210] Category III includes Cal., Ind., Iowa, Mass., Nev., R.I., S.D., and Wyo.

[211] Category IV includes Ga., Ill., Me., Mich., Mo., N.H., and Wash.

Contrary to the *Robinson* logic, the *Danson v. Casey*[212] decision from Pennsylvania discussed previously illustrates a totally different judicial viewpoint. In *Danson*, the court was of the opinion that as long as the legislative scheme for financing public education was reasonably related to providing for the maintenance and support of a thorough and efficient system of public education the legislature had fulfilled its constitutional duty. Thus, such state constitutional guarantees regarding thorough and efficient mandates do not guarantee school children in a given district the same identical educational services that might be available to school children elsewhere in the same state.

Thus, the operationalizing of such terms will vary greatly from court to court and in fact from state to state. These two cases tend to illustrate the vast divergence in judicial thinking on this standard. The operationalization of thorough and efficient will be a product of the state constitution's controlling language, the quality of the plaintiffs' as well as the state's statistical methodology, and the quality of the legal arguments on both sides. Thus, to predict the outcome of thorough and efficient complaints is not a productive undertaking.

Thro has, without question, advanced the understanding of education finance litigation with his taxonomy scheme. Additionally, it is critical to point out that Thro concludes that "[b]ecause the state education clauses have limited utility as vehicles for public finance reform, litigants have searched for alternative state constitutional provisions that would be more effective."[213] However, Thro's analysis, while quite helpful, does not necessarily shield the state from a well-grounded complaint or provide for its overall defense strategy. The state must counterattack the claims of plaintiffs on the language of the state constitution, using its statistical analysis to show the court that the actions of the state are indeed rational and directly related and congruent with the language of the state constitution. The state must respond to the specific charges of the plaintiffs as opposed to merely shielding itself in the language of the state constitution. Regardless of the language of the state constitution, plaintiffs will attempt to show that the state constitution is not being met through a variety of statistical analyses and mechanisms.

Active Lawsuits

Obviously, litigation regarding the distribution formula is a high risk activity for both plaintiffs and defendants. For defendants, the risks are substantial in that it could dictate that the distribution formula must be changed dramatically in order to implement a court order. The cost to the public treasury may be extremely high for many years to come. For plaintiffs, the risks are significant in that it may mean losing and thus the result dictates that these school districts must educate the children in an educational environment that they perceive to be in need of vastly increased revenues. Both parties face the significant risk of unintended consequences, i.e., the solution may not be what either party had in mind, but may be one that is acceptable to the courts. Thus, the concept of unintended results often leads to greater state control over what was previously conceived as local decision making. Nonetheless, the suits continue and the authors are secure in predicting that these suits will continue for many years into the future.

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[212] 399 A.2d 360 (Pa. 1979).

[213] Thro, *To Render Them Safe* at 1669-70.

During the early 1990s, and since the release of the first edition of this text, education finance suits have continued. During this decade, and as discussed earlier, plaintiffs won at the state supreme court level most notably in Arkansas, Connecticut, Kentucky, and Texas with no further filings at the present time. In some of these instances, plaintiffs won and yet lost later during compliance litigation. Plaintiffs in other states won at the state supreme court level, but further compliance litigation has occurred where the courts either retained jurisdiction or plaintiffs refiled, resulting in continuing review. Compliance litigation continues in several states. In at least nine states, plaintiffs have lost at the supreme court level with no further filings, or alternatively have lost resultant complaints as well. Additionally, several states, such as Pennsylvania[214] and North Carolina,[215] reflect complex and lengthy complaints that at the time of this writing have not been heard. At the time of this writing a new suit in Wisconsin has been filed challenging the latest revisions to the distribution formula.[216] In several states, complaints are expected within the near future. Great caution should be exercised in these interpretations in that other suits have been subsequently filed by different parties on different issues dealing with the overall distributional formula.

The dynamics of contemporary education finance litigation make it virtually impossible to present an accurate account of all actions before every trial court.[217] Further, it is often commonplace that many complaints do not reach trial for one of several reasons. Plaintiffs initiate lawsuits quite frequently and in many instances withdraw them just as quickly. Further, lawsuits may be dismissed by the court as it is common practice of the states to file motions for dismissal. Some suits are never reported as they may not go beyond the lowest trial court as the plaintiffs may not appeal.

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[214] Pennsylvania Ass'n of Rural and Small Sch. v. Casey, Commw. Ct. of Pa., No. 11 M.D. 1991,

[215] Leandro v. State, Case No. 94CVS520, (Halifax County), 455 S.E.2d 662.

[216] Association v. State, (Dane County Cir. Ct. 1995).

[217] The discussion of the current cases also appears in D. C. Thompson, R. C. Wood, & D. S. Honeyman, *supra* note 30.

Despite these severe limitations, an overview, albeit one that can never be complete, is provided. In the waning months of 1995, litigation was before the courts in several states. In some instances, the court has issued its opinion but it has yet to appear in a reporter. Additional filings may occur in several more states, according to the press. When these instances are added to compliance monitoring, the education finance climate will continue to be intense and perhaps even increase.

CHAPTER 10

FUTURE EDUCATION FINANCE ISSUES

The Future of Education Finance Litigation

The financing of public education in America obviously competes with other needed services for revenues. State policy makers often are highly critical of public education expenditures as being ever increasing, particularly, in view of state revenue constraints. Yet, it has been observed that many of these state policymakers routinely approve expenditures from fifteen to twenty times greater in order to incarcerate a prisoner within the penal system. Such expenditures, while obviously necessary, produce no economic returns to society. Public policymakers, with rare exception, are fixated on the short term. That is to say that this fixation is operationalized in that the activity and the return on the expenditure must occur within the policymaker's term of office in order to have a perceived value. Given this reality, education finance litigation is irresoluble within the realities of the current political and financial structure of public elementary and secondary education in society.

One must conceptualize that considerations of fairness and justice may transcend an equality of treatment. In fact, it has been observed that equity may require deviations from absolute arithmetic equality so that fairness may be served with regard to children with special needs. This concept, as previously discussed, is difficult for policymakers as well as others to grasp and visualize for the common good of society.

American society spends less for public elementary and secondary education as a percentage of the GNP than most western countries. Critics and observers have noted American children spend less time in school than all our economic competitors. Commentators of American life have long pointed out that children in our society experience inattentive or overworked parents, scarce child care and preschool opportunities, unsafe neighborhoods, mindless television programming, and overall isolation from adults. A half a million children under six years of age have no health insurance, and one-fourth of pregnant women have no prenatal care. Further, indications are that at least thirty-five percent of children who enter kindergarten are unprepared to learn as they lack skills in vocabulary and sentence structure that are crucial to success in school.

Previously, the authors have observed that public education operated in a fairly efficient manner. This is not to suggest that efficiency equates with fundamental fairness. It is to say that it was fairly inexpensive and perhaps, given one's value system, even cost-effective. It is to say that it reflected the efficiency of the marketplace. Public education finance did not operate based on the supply and demand of the open marketplace due to the fact that society had substituted the state legislature for competing political and economic interests. That is to say, society substituted the political arena as a proxy for the arena of the marketplace.

Unfortunately, this distinction fails to grasp the reality of the distribution of scarce resources. An examination of distribution reveals vast disparities of resources and resultant educational opportunities within many states. In fact, it could be argued that often legislatures only operated to instill their social and financial position via state aid formulas. This phenomena can be referred to as 'politics by printout.' This reality is often compounded in that the typical state legislature is badly 'balkanized' by competing self-interests.

Thus, the current arena of competing interests have long since moved from the economic marketplace to the political arena or the state legislature. In recent times these competing interests have moved into and in fact will actually reside in the judicial arena.

The judicial arena will become even more the marketplace to settle competing ideas and philosophies, as well as conflicting political and economic interest and tensions. Thus, it is and will be the courts that will become the arbitrator of the distribution of scarce resources to society. The courts will become the conveyors and policymakers of public education due to the fact that the various state legislatures have and will continue to exhibit inability to settle long-range education fiscal policies.

Greater education finance equity will rarely emerge from the various interest groups of a given state. Given their constituencies, all such groups, including the legislature, have exhibited difficulty in increasing fiscal equity. Such groups may, at best, only modestly increase funding over a period of years. However, these groups generally cannot do so in an equitable manner given their constituents and their narrow and provincial interests. It has been observed that only the governor's office could hope to significantly affect finance equity. Unfortunately, this concept has proved to be largely a failure as well. This is due mostly, as a result of the political constraints and resultant residuals that flow from such offices.

Under this system, the judiciary has emerged as the avenue of reform, the vehicle of change, and the final arbitrator of fiscal education policy in America. Further, once the avenue of redress becomes solely lodged within the judicial sphere, one would argue that the education finance litigation will in fact significantly increase. Education finance litigation is in fact serial in nature. Plaintiffs will return again and again in order to have the court order fully implemented according to how plaintiffs perceive the decision should be fully and completely operationalized.

In this nation, with its living constitution, equality has long been the goal of social and economic reform. The vision has been of children growing to become adults who share equality in the economic, political, and social power of our great nation.

The pursuit of equality in the education finance arena is natural and fundamental to seeking protections to offset the fundamental disadvantages within society. Many have argued and written that a child's opportunity or standing in the educational arena should not be limited by the economic capacity of the parent. Thus, reformers argue that public education must, as an entity, create, transmit, and secure social and economic equality for all individuals in the form of equal educational opportunity. In order to achieve this goal, education finance researchers have long argued the importance of fiscal resources to student outcomes. Those who fail to recognize this concept make a mockery of equal opportunity mandates.

The concept of equal educational opportunity must be examined in light of several statistical and research models. Overall, does the state aid distribution formula relate to the educational needs of the students of the state? Specifically, it can be argued that the state aid distribution formula must fully eliminate any wealth-related educational opportunity. If the formula were not to do so, then it is argued that by legislative intent, and by its own operational definition, such standards are violated.[218]

Presently, in nearly all education finance litigation cases, the state education articles are controlling as the plaintiffs ask the state to accomplish what it intended to do in the design of the overall formula. The plaintiffs argue that the operation of the formula must be judged to be both equitable and adequate if the formula were to be rational. In essence, the argument is that the payment of state and local funds is the state's definition of its intent, as well as its definition of equity.

As discussed herein, such arguments can only be proved or disproved via sound and rather sophisticated statistical evaluation. These statistical models generally tend to center around:

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[218] This concept is fully developed in studies by the authors, *e.g.*, D. C. Thompson & R. C. Wood, Adequacy of Educational Revenues in Oklahoma School Districts: Expert Analysis on Behalf of Plaintiffs in Fair Sch. Fin. Council, Inc. v. State of Okla.; Educational Fiscal Equality in Kansas Under the School District Equalization Act: Consultants' Analyses on Behalf of Plaintiffs in Newton U.S.D. 373 v. State of Kan.; Fiscal Equity in Kansas Under the School District Equalization Act: Consultants' Analysis on Behalf of Turner U.S.D. 202 in Mock v. State of Kan. (Wood, Thompson & Assoc., Inc. 1992).

- resource accessibility, i.e., asking questions of whether students have equal access to fiscal resources,
- wealth neutrality, i.e., asking questions of whether resources are related to local wealth, and
- tax-yield standards, i.e., asking questions of whether equal tax efforts result in equal tax yields.

Through these types of quantitative analysis, as well as the utilization of qualitative research, i.e., observations and structured interviews of school leaders, and the use of matched pairs, plaintiff districts may be able to demonstrate a distribution formula that in fact causes harm to the school children residing within these plaintiff districts. In several instances, plaintiffs have conclusively demonstrated that specific school districts are not able to engage in equal education as demonstrated by such things as the district's inability to update textbooks, hire teachers with advanced degrees, purchase school buses on a periodic basis, and offer special education programs in comparisons to statistically equivalent school districts within the same state.

Misplaced Reliance on the Courts

Notwithstanding these issues, it would be a grave error in judgment to assume that all of the current suits are somehow virtuous and that state aid distribution formulas, either by intent or by benign neglect, somehow harm certain school districts and as a result certain portions of society. Many suits by plaintiffs are without legal or statistical merit. Often, they are misguided attempts of practitioners or zealous reformers to change a given state aid distribution formula with no empirical evidence. In these scenarios, a group of superintendents aided by social critics allege that a given distribution formula is ripe for constitutional challenge in that their districts are not receiving the moneys they perceive should be distributed to their school districts. Often, after the complaint is filed and the accusations are found by dispassionate education finance researchers to be fairly weak, the tack of the case begins to shift. The plaintiffs attempt to say throughout the case that they are in reality representing all poorer school districts and all school districts that are harmed by the distribution formula. The statistical analysis that determines that plaintiff districts are not harmed by the formula is met with the rhetoric that the formula must be harmful to other school districts within the state. Thus, the plaintiffs shift the argument from harm to themselves to the harm of others. Regardless of who is allegedly harmed, the arguments are that the formula disenfranchises someone by virtue of one or more weaknesses within the education finance distribution formula. The plaintiffs then make the assumption that the formula is ripe for constitutional challenge. Oftentimes, these suits emerge largely based on anecdotal data and simplistic descriptive statistical overviews. Many complaints are poorly conceived in education finance research methodology. In fact, in several suits currently in existence, plaintiffs are arguing ill-conceived and poorly designed concepts. If plaintiffs were to prevail, greater inequities may in fact emerge. In certain instances, the relatively poorer school districts would in fact be harmed by such judicial actions.

It is the observation of these authors that states often have great difficulty conceptualizing how they must be defended. For example, the state should always question the standing of the school districts to engage in this activity. This would be a normal and even potentially productive line of defense.[219] However, oftentimes the state clings to the fact that every school district meets a given minimal standard.[220] The plaintiffs will attempt to define the term 'minimal' to mean a quality education. This quality definition will be all the easier to demonstrate if reform measures by the state were promulgated for school district adherence.[221] It is when these concepts become the sole or primary defense in which scarce resources are diverted in relation to the overall defense that these strategies becomes problematic. The state must be fully prepared to quantitatively and qualitatively address the issues of the complaint. More specifically, states must be prepared to present defensible quantitative and qualitative models that reflect that the distribution formula is rational, is related to legitimate policy objectives, and is designed to meet equal educational opportunity within any rational understanding.

Frequently, states cling to the position that moneys have no bearing on education. Such defenses are often nonsensical and counterproductive. The plaintiffs may refute these observations in a variety of ways. The plaintiffs may present data that the poorest school districts do not have discretionary dollars after meeting mandated state requirements. Further, the plaintiffs have utilized on several occasions the strategy of matched pairs in which poor school districts are matched against relatively wealthy school districts. Thus, comparisons of the educational programs in relationship to overall wealth and expenditures are held up against the state's arguments to the contrary. To pursue arguments that moneys make no difference is to suggest to the general public that those school districts that exhibit higher per-pupil expenditures should be pursued under other statutory grounds for wasting taxpayer dollars.[222] Within this discussion it is noteworthy that state supreme courts have accepted, as well as rejected, the concept that moneys do in fact make significant differences in terms of equal educational opportunity.[223] Despite this specific acceptance, it must be noted that the supreme courts of New York and Georgia ruled for the state.

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[219] *See, e.g., East Jackson*, 348 N.W.2d 303.

[220] *See, e.g., Rodriguez*, 411 U. S. 1, *reh'g denied*, 411 U.S. 959 (1973).

[221] *See* D. C. THOMPSON & R. C. WOOD, ADEQUACY OF EDUCATIONAL REVENUES IN OKLAHOMA SCHOOL DISTRICTS: EXPERT ANALYSIS ON BEHALF OF PLAINTIFFS IN FAIR SCH. FIN. COUNCIL, INC. V. STATE OF OKLA. (Wood, Thompson & Assoc., Inc. 1992).

Plaintiff arguments are buttressed by data that support the reality that state control is pervasive in that local school districts have very little, if any, local control over decision making that has any impact over the operation of local schools. The plaintiffs present data concerning the massive regulations that reflect these arguments. States should be fully prepared to note data concerning the utilization of sound administrative and curricular leadership that is recognized and accepted, for example, by effective schools' research and the notable lack of such activities within plaintiff school districts.[224]

Throughout the litigation, plaintiffs must be prepared to present data concerning alternative solutions and formulas based on defensible data as to suggest a workable solution for the court to understand. The responsibility of convincing the court that there are alternative workable fiscal solutions that may meet the constitutional standard lies with the plaintiffs. Otherwise, the state will permeate its arguments with the concept that there may indeed be a problem but, regardless of certain weakness, no real workable solution exists within the corridor of rational thinking that will meet any elusive and nebulous theoretical standard. However, the state must be prepared to thoroughly examine and rebut the actual solutions as well as the concepts that will tend to emerge throughout the litigation. The state must continually remind the court that simply because the plaintiffs may present a better methodology for the distribution of scarce resources this does not, within itself, meet a constitutional test. The reality is that the present methodology must be shown by the plaintiffs to be in conflict with the state constitution. Nonetheless, these arguments must permeate the discussions in order to reach a satisfactory conclusion by the parties.

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[222] The court noted this concept in the original *Serrano* trial; as well as in *Van Dusartz*, 334 F. Supp. at 874.

[223] *See Serrano*, 487 P.2d 1241 (1971); *Robinson*, 303 A.2d 273 (1973); *Serrano*, 557 P.2d 929 (1976); *Horton*, 376 A.2d 359 (1977); *Washakie*, 606 P.2d 310 (Wyo. 1980); McDaniel v. Thomas, 285 S.E.2d 156 (1981); *Levittown*, 439 N.E.2d 359; Dupree v. Alma, 651 S.W.2d 90; *Pauley*, 324 S.E.2d 128; *Helena*, 769 P.2d 684; *Rose*, 790 S.W.2d 186; *Edgewood*, 777 S.W.2d 391; *Abbott*, 575 A.2d 359; *but cf. Milliken*, 212 N.W.2d 711 (1973); *Thompson*, 537 P.2d 635; *Danson*, 399 A.2d 360.

[224] For a more detailed discussion of how the effective school movement intersects with education finance litigation *see* R. C. Wood & J. Maiden, Resource Allocation Patterns Within School Finance Litigation Strategies, ch. 10 in Where Does the Money Go? American Education Finance Ass'n Annual Yearbook, 197-211, (L. Picus ed., 1996).

On occasion, defendant states engage in positions that are convoluted and may yield interesting arguments. For example, states often argue that a given finance distribution cannot be arbitrary and capricious if it provides for local control. Thus, the state is placed in an interesting position of arguing that if local policymakers were to opt for unequal educational opportunity for the children within their own school communities, then somehow whatever weaknesses that may exist are deemed to be acceptable to the court. The state must make the argument for the policy of local control, but only if the local school districts have the real world options of providing complete and equal educational services by virtue of the formula.

Concurrently, plaintiffs will be attempting via data analysis and strategy to link funding disparities to a minimum level of education in order to meet the constitutional mandates regarding public education. If the plaintiffs were able to show that the system of funding education were inefficient, dependent upon the state constitutional language, then this argument is in fact a surrogate to achieve heightened scrutiny. If these cases can develop a nexus between education and resource disparities in terms of educational failure and the impact on individuals, the plaintiffs may prevail. The attempt will be to approximate collective educational failure in order to establish fundamental rights which condemningly link resources to opportunity. These arguments, depending upon the sophistication of data analysis, may offer great promise. Again, the state must engage in its own data analysis in order to refute such claims. The mere fact that wide disparities exist is not indicative of the ruling.[225] As an example of this concept, in *Edgewood v. Kirby* the court viewed education as "a guardian of other important rights."[226] The nexus concept has been specifically accepted by the state supreme courts in Arkansas[227] and Montana.[228]

The overall concept must be recognized by all parties. Issues of efficiency, adequacy, and equal protection arguments can only be supported or refuted via data analysis and strategy. These data analyses can consist of both sophisticated quantitative and qualitative models in order for each contention to be proved or disproved.

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[225] *See, e.g.*, State supreme courts ruling for the defendant while specifically examining wide disparities in property tax wealth include *Nyquist*, 439 N.E.2d 359 (1982); *Dupree*, 651 S.W.2d 90 (1983); *Fair School Council*, 746 P.2d 1135, (1987); *Kukor*, 436 N.W.2d 568, (1989); *McDaniel*, 285 S.E.2d 156 (1981); *Milliken*, 212 N.W.2d 711 (1973); *Serrano* (*Serrano I*), 487 P.2d 1241 (1971).

[226] *Edgewood*, No. 362 at 538 (Dist. Ct. of Travis County, 250 Judicial Dist. of Tex., June 1, 1987).

[227] *Dupree*, 651 S.W.2d at 93.

[228] *Helena*, 769 P.2d 684.

It is important to note that equal expenditures do not mean equality; however, unequal expenditures do not mean equality either. The courts may accept vast unequal expenditures if the expenditures were equally distributed, e.g., sound categorical programs, special programs, high-risk students and so on. Again, these vertical adjustments must be made in relationship to the wealth of the local community.

Prevailing parties must engage in sound legal strategies, reflect a sound knowledge of education finance research, and engage in sound analysis of data in its presentation to the courts. If one of these strategies fails, the likelihood of prevailing is severely diminished.

It must be realized that the resolution of these disputes will continue to reside within the judicial arena. Even if such classic education finance disputes were to be resolved, new issues emerge every year. Public education is, out of reality, becoming a full-service agency in every sense of the term. With increasing societal pressures and expectations, as well as growing expectations of the only pervasive social agency left within our society, the public education system will be called upon to meet even greater societal needs in the future. Numerous social issues are forcing public school districts to deal with pressures heretofore not envisioned. Representative of these issues are such societal pressures as children with crack addiction, AIDS, fetal alcohol syndrome, homeless children, natural disasters, rapid increases of children with severe needs, along with the growing issue of within-school-district equity issues.[229] This list of growing expectations and social ills facing society and thus the public educational system will only continue to grow in the future out of the reality that society has no other public agency for dealing with the next generation. State policy issues of site-based management, state tuition tax plans, the rapidly changing demographics and the massive growth of special populations will continue to occur and grow in geometric proportions for the future. Thus, the demands on public elementary and secondary education will grow, and the facts dictate that even greater moneys must be distributed in an equitable and adequate manner to public elementary and secondary education in America.

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[229] For an illustration of these issues concerning the financing of public education *see* R. C. Wood & D. S. Honeyman, Rapid Growth and Unfulfilled Expectations: Problems for School Finance in Florida, ch. 8 in Who Pays for Student Diversity? Population Changes and Educational Policy 160-79 (J. G. Ward ed., 1991). *See also* D. C. Thompson, Special Needs Students: A Generation at Risk, ch. 5 in Who Pays for Student Diversity? Population Changes and Educational Policy 97-124 (J. G. Ward ed., 1991).

While forecasting the future of education finance litigation is generally not a cost- or time-effective task, the authors do offer certain overall thoughts as to how plaintiffs, as well as defendants, may be more successful in the future. Within the framework as discussed herein, the quality necessary for quantitative and qualitative modeling to prove or disprove allegations will prove to be most fruitful in the battle over future shifting paradigms. If plaintiffs can recast education in the light of fundamentality, equal opportunity, and equal protection due to the fact that resources will be seen to impede the opportunity chain of economic, social, physical and emotional development of individuals, their position will be enhanced. The success in proving or disproving these technical issues and their interpretation in relationship of the opportunity chain to state education articles may prove to be an effective surrogate to achieve the same ends. In fact, surrogates may invoke heightened scrutiny, or alternatively, succeed under a minimal standard. Where reform has not required strict scrutiny, if it can be shown that a system were inefficient, this too offers a possibility. If state cases can be drawn along lines emphasizing a nexus between education and resource disparities in terms of costs of educational failure and impact, some measure of success may emerge, especially under the efficiency questions. Arguments which tie appropriate individual educational experiences to established fundamental rights and which condemningly link resources to opportunity may portend for the future. However, when defendant states can utilize these same strategies in term of quantitative and qualitative modeling to disprove the allegations, this also is manageable and will lead to better state distribution models for the future. The reanalysis of progress in education finance equity suggests that reform depends on successful strategies by both plaintiffs and defendants to which the judiciary favorably responds.

APPENDIX

STATE CONSTITUTIONAL LANGUAGE

Alabama

Education Clause

The Legislature shall establish, organize and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. . . . ALA. CONST. art. XIV, § 256.

Provision for Equal Treatment

That all men are equally free and independent; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. ALA. CONST. art. I, § 1.

Alaska

Education Clause

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution. ALASKA CONST. art. VII, § 1.

Provision for Equal Treatment

This constitution is dedicated to the principles that all persons have a natural right to life, liberty and the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities and protection under the law; and that all persons have corresponding obligations to the people and the State. ALASKA CONST. art. I, § 1.

Arkansas

Education Clause

[T]he State shall ever maintain a general, suitable and efficient system of free schools whereby all persons in the State between the ages of six and twenty-one years may receive gratuitous instruction. ARK. CONST. art. 14, § 1.

It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb and the blind, and also for the treatment of the insane. ARK. CONST. art. 14, § 19.

Provision for Equal Treatment

The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition. ARK. CONST. art. 2, § 3.

Arizona

Education Clause

The University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be nearly free as possible. The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years. ARIZ. CONST. art. II, § 6.

The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb and blind. ARIZ. CONST. art. II, § 1.

Provision for Equal Treatment

No laws shall be enacted granting to any citizen, class of citizens or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations. ARIZ. CONST. art. 2, § 13.

California

Education Clause

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year . . . . CAL. CONST. art. 9, § 5.

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement. CAL. CONST. art. 9, § 1.

Provision for Equal Treatment

All laws of a general nature shall have a uniform operation. CAL. CONST. art. 1, § 11.

No special privileges or immunity shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens. CAL. CONST. art. 1, § 21.

Colorado

Education Clause

The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously. COLO. CONST. art. IX, § 2.

Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law. COLO. CONST. art. VIII, § 1.

Provision for Equal Treatment

No person shall be deprived of life, liberty or property, without due process of law. COLO. CONST art. II, § 25.

Connecticut

Education Clause

There shall always be free public elementary and secondary schools in the state. CONN. CONST. art. 8, § 1.

Provision for Equal Treatment

No persons shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin or sex. CONN. CONST. amend. V.

Delaware

Education Clause

The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means. DEL. CONST. art. X, § 5.

The General Assembly, notwithstanding any other provision of this Constitution, may provide by an Act of the General Assembly, passed with the concurrence of a majority of all the members elected to each House, for the transportation of students of non-public, non-profit Elementary and High Schools. DEL. CONST. art. X, § 5.

Provision for Equal Treatment

All courts shall be open; and every man for an injury done him in his reputation, person, movable or immovable possessions, shall have remedy by the due course of law and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law. DEL. CONST. art. 1, § 9.

Florida

Education Clause

Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require. FLA. CONST. art. IX, § 1.

No person shall be deprived of any right because of race, religion or physical handicap. FLA. CONST. art. I, § 2.

Provision for Equal Treatment

All natural persons are equal before the law and have inalienable rights . . . . No person shall be deprived of any right because of race, religion or physical handicap. FLA. CONST. art. I, § 2.

Georgia

Education Clause

The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation. GA. CONST. art. VIII, § I.

Provision for Equal Treatment

Protection to person and property is the paramount duty of government, and shall be impartial and complete. GA. CONST. art. I (sec. II), § 2-203.

Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights shall be varied in any particular case, by special legislation, except with free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract is capable of such consent. GA. CONST. art. I, § 2-207.

Hawaii

Education Clause

The State shall provide for the establishment, support, and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefore. There shall be no discrimination in public education institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian institution. HAW. CONST. art X, § 1.

The State shall have the power to provide for the treatment and rehabilitation of handicapped persons. HAW. CONST. art. IX, § 2.

Provision for Equal Treatment

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry. HAW. CONST. art. I, § 5.

Idaho

Education Clause

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public, free common schools. IDAHO CONST. art. IX, § 1.

Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other Institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law. IDAHO CONST. art. X, § 1.

Provision for Equal Treatment

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature. IDAHO CONST. art. I, § 2.

Illinois

Education Clause

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has primary responsibility for financing the system of public education. ILL. CONST. art. X, § 1.

Provision for Equal Treatment

No person shall be deprived of life liberty or property without due process of law nor be denied the equal protection of the laws. ILL. CONST. art. I, § 2.

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer. ILL. CONST. art. I, § 19.

Indiana

Education Clause

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, or a general uniform system of Common schools, wherein tuition shall be without charge, and equally open to all. IND. CONST. art. 8, § 1.

It shall be the duty of the general assembly to provide, by law for the support of institutions for the education of the deaf and dumb and blind, and treatment of the insane. IND. CONST. art. 9, § 1.

Provision for Equal Treatment

We declare, that all men are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty and the pursuit of happiness . . . . IND. CONST. art. 1, § 1.

The general assembly shall not grant to any citizen, or class of citizen, privileges and immunities which, upon the same terms, shall not equally belong to all citizens. IND. CONST. art. 1, § 23.

Iowa

Education Clause

The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such schools shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid, may be deprived of their portion of the school fund. IOWA CONST. art. IX, § 12.

The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. IOWA CONST. art. IX, § 3.

Provision for Equal Treatment

All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens. IOWA CONST. art. I, § 6.

Kansas

Education Clause

No tuition shall be charged for attendance at any public school to pupils required by law to attend such school. KAN. CONST. art. 6, § 6(b).

The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law. KAN. CONST. art. 6, § 1.

Institutions for the benefit of mentally or physically incapacitated or handicapped persons, and such other benevolent institutions as the public good may require, shall be fostered by the state, subject to such regulations as may be prescribed by law. KAN. CONST. art. 7, § 1.

The legislature may levy a permanent tax for the creation of a building fund for institutions caring for those who are mentally ill, retarded, visually handicapped, with a handicapping hearing loss, tubercular or for children who are dependent, neglected or delinquent and in need of residential institutional care or treatment and for institutions primarily designed to provide vocational rehabilitation for handicapped persons. KAN. CONST. art. 7, § 6.

Provision for Equal Treatment

All men are possessed of equal and inalienable natural rights, among which are life, liberty and the pursuit of happiness. KAN. CONST. Bill of Rights § 1.

All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency KAN. CONST. Bill of Rights § 2.

Kentucky

Education Clause

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State. KY. CONST. § 183.

Provision for Equal Treatment

All men, when they form a social compact, are equal; and no grant of exclusive, separate emoluments or privileges shall be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution, and every grant of a franchise, privilege or exemption shall remain subject to revocation, alteration or amendment. KY. CONST. § 3.

Louisiana

Education Clause

The legislature shall provide for the education of the people of the state and shall establish and maintain a public education system. LA. CONST. art. VIII, § 1

Provision for Equal Treatment

No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. LA. CONST. art. I, § 3.

Maine

Education Clause

A general diffusion of the advancement of education being essential to the preservation of the rights and liberties of the people to promote this important object . . . . it is the [duty of the legislature] to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools. ME. CONST. art. VIII, § 8.

Provision for Equal Treatment

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof. ME. CONST. art. I, § 6-A.

Maryland

Education Clause

The General Assembly at its first session after the adoption of this Constitution, shall, by law, establish throughout the state a thorough and efficient system of free public schools. MD. CONST. art. VIII, § 1.

Provision for Equal Treatment

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land. MD CONST. art. XXIV.

Massachusetts

Education Clause

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools and grammar schools in the towns . . . . MASS. CONST. ch. 5, § 2.

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth. MASS. CONST. amend. CXIV.

Provision for Equal Treatment

All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. MASS. CONST. art. I, § 1.

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth. MASS. CONST. amend. CXIV.

Michigan

Education Clause

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin. MICH. CONST. art. VIII, § 2.

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and means of education shall forever be encouraged. MICH. CONST. art. VIII, § 1.

Institutions, programs and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously handicapped shall always be fostered and supported. MICH. CONST. art. VIII, § 8.

Provision for Equal Treatment

All political power is inherent in the people. Government is instituted for their equal benefit, security and protection. MICH. CONST. art. I, § 1.

No person shall be denied the equal protection of the laws . . . . MICH. CONST. art. I, § 2.

Minnesota

Education Clause

The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state. MINN. CONST. art. XIII, § 1.

Provision for Equal Treatment

No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. . . . MINN. CONST. art. I, § 2.

In all cases where a general law can be made applicable, a special law shall not be enacted except as provided in section 2 [pertaining to local governments]. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. MINN. CONST. art. XII, § 1.

Mississippi

Education Clause

The legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the legislature may prescribe. Miss. CONST. art. 8, § 201.

It shall be the duty of the legislature to provide by law for the support of institutions for the education of the deaf, dumb and blind. MISS. CONST. art. 8, § 209.

Provision for Equal Treatment

No person shall be deprived of life, liberty, or property except by due process of law. MISS. CONST. art. 3, § 14.

Missouri

Education Clause

[A] general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state not in excess of 21 years. MO. CONST. art. IX, § 1(A).

Provision for Equal Treatment

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and entitled to equal rights and opportunity under the law. . . . MO. CONST. art. I, § 2.

Montana

Education Clause

The legislature shall provide a basic system of free quality public elementary and secondary schools. MONT. CONST. art. X, § 1(3).

It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. MONT. CONST. art. X, § 1.

[N]o person shall be refused admission to any public educational institution on account of sex, race, religion, creed, political beliefs or national origin. MONT. CONST. art. X, § 7.

Provision for Equal Treatment

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation or institution shall discriminate against any person in the exercise of his civil rights on account of race, color, sex, culture, social origin or condition or political or religious ideas. MONT. CONST. art. II, § 4.

Nebraska

Education Clause

The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof. NEB. CONST. art. VII, § 1.

The Legislature may provide that the state or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of twenty-one years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature. NEB. CONST. art. VII, § 11.

Provision for Equal Treatment

All persons are by nature free and independent and have certain inalienable rights; among those are life, liberty and pursuit of happiness. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed. NEB. CONST. art. I, § 1.

There shall be no discrimination between citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property. The right of aliens in respect to the acquisition, enjoyment, and descent of property may be regulated by law. NEB. CONST. art. I, § 25.

The Legislature shall not pass local or special laws. . . . Granting to any corporation, association, or individual any special or exclusive privileges immunity or franchise whatever; . . . In all other cases where a general law can be made applicable, no special law shall be enacted. NEB. CONST. art. III, § 18.

Nevada

Education Clause

The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools. NEV. CONST. art. II, § 2.

Provision for Equal Treatment

All men are by nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and pursuing and obtaining safety and happiness. NEV. CONST. art. I, § 1.

[A]ll laws shall be general and of uniform operation throughout the state. NEV. CONST. art. IV, § 21.

New Hampshire

Education Clause

[I]t shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools. . . . N.H. CONST. art. CXXXIII.

The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the state between the ages of five and eighteen years. N.H. CONST. art. 8, § 4.

Provision for Equal Treatment

All men are born equally free and independent: Therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good. N.H. CONST. art. 1.

New Mexico

Education Clause

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained. N.M. CONST. art. XII, § 1.

Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the state and free from sectarian control, and said schools shall always be conducted in English N.M. CONST. art. XXI, § 4.

Provision for Equal Treatment

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person. N.M. CONST. art. II, § 18.

New York

Education Clause

The legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the state may be educated. N.Y. CONST. art. II, § 1.

Provision for Equal Treatment

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. N.Y. CONST. art. I, § 11.

North Carolina

Education Clause

The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students. N.C. CONST. art. IX, § 2(1).

Education encouraged. Religion morality and knowledge being necessary to good government and the happiness of mankind, schools, libraries and the means of education shall forever be encouraged. N.C. CONST. art. IX, § 1.

Provision for Equal Treatment

No person shall be taken imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws: nor shall any person be subjected to discrimination by the State because of race, color, religion or national origin. N.C. CONST. art. I, § 19.

North Dakota

Education Clause

The Legislature shall provide for a uniform system of free public schools throughout the state. N.D. CONST. art. VIII, § 2.

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota. N.D. CONST. art. VIII, § 1.

Provision for Equal Treatment

All laws of a general nature shall have a uniform operation. N.D. CONST. art. I, § 22.

Ohio

Education Clause

The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state. OHIO CONST. art. VI, § 2.

Provision for Equal Treatment

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked or repealed by the general assembly. OHIO CONST. art. I, § 2.

Oklahoma

Education Clause

The Legislature shall establish and maintain a system of free public schools wherein all children of the state may be educated. OKLA. CONST. art. XIII, § 1.

The Legislature shall provide for the establishment and support of institutions for the care and education of persons within the state who are deaf, deaf and mute or blind. OKLA CONST. art. XIII, § 2.

Provision for Equal Treatment

All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry. OKLA. CONST. art. II, § 2.

No person shall be deprived of life, liberty, or property, without due process of law. OKLA. CONST. art. II, § 7.

Oregon

Education Clause

The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools. OR. CONST. art. VIII, § 3.

Provision for Equal Treatment

No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens. OR. CONST. art. I, § 20.

Pennsylvania

Education Clause

The General Assembly shall provide for the maintenance of a thorough and efficient system of public education to serve the needs of the Commonwealth. PA. CONST. art. III, § 14.

Provision for Equal Treatment

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any right. PA. CONST. art. I, § 26.

Rhode Island

Education Clause

[I]t shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education. R.I. CONST. art. XIII, § 1.

Provision for Equal Treatment

All free governments are instituted for the protection, safety and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. R.I. CONST. art. I, § 2.

South Carolina

Education Clause

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable. S.C. CONST. art. XI, § 3.

Provision for Equal Treatment

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law nor shall any person be denied the equal protection of the laws. S.C. CONST. art. I, § 3.

South Dakota

Education Clause

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all: and to adopt all suitable means to secure to the people the advantages and opportunities of education. S.D. CONST. art. VIII, § 1.

Provision for Equal Treatment

No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities upon which the same terms shall not equally belong to all citizens or corporations. S.D. CONST. art. VIII, § 18.

Tennessee

Education Clause

The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. TENN. CONST. art. II, § 12.

Provision for Equal Treatment

That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land. TENN. CONST. art. I, § 8.

The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provision of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested. TENN. CONST. art. II, § 8.

Texas

Education Clause

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools. TEX. CONST. art. VIII, § 1.

Provision for Equal Treatment

Equality under the law shall not be denied or abridged. TEX. CONST. art. I, § 3(a).

Utah

Education Clause

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State and be free from sectarian control. UTAH CONST. art. X, § 1.

Institutions for the Deaf and Dumb, and for the Blind, are hereby established . . . [there] shall be a perpetual fund for the maintenance of said Institutions. It shall be a trust fund. . . . UTAH CONST. art. X, § 10.

Provision for Equal Treatment

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require. UTAH CONST. art. I, § 2.

Vermont

Education Clause

Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth. VT. CONST. ch. 11, § 64.

Provision for Equal Treatment

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single man, family, or set of men who are a part only of that community; and that community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal. VT. CONST. ch. 1, art. VII.

Virginia

Education Clause

The General Assembly shall provide for a system of free public elementary and secondary schools for all children throughout the Commonwealth and shall seek to ensure that an educational program of high quality is established and continually maintained. VA. CONST. art. VIII, § 1.

Standards of quality . . . shall be determined and prescribed by the Board of Education, subject to revision only by the General Assembly. VA. CONST. art. VIII, § 2.

The General Assembly shall provide for the compulsory elementary and secondary education of every eligible child of appropriate ages. VA. CONST. art. VIII, § 3.

Provision for Equal Treatment

That no person shall be deprived of his life, liberty, or property without due process of law; . . . that the right to be free from any governmental discrimination on the basis of religious conviction, race, color, sex or national origin shall not be abridged. . . ." VA. CONST. art. I, § 11.

That all men are by nature equally free and independent and have certain inherent rights of which, when they enter into a state of society, they cannot, by any compact, deprive their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety. VA. CONST. art. I. § 1.

Washington

Education Clause

The legislature shall provide for a general and uniform system of public schools. WASH. CONST. art. IX, § 2.

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex. WASH. CONST. art. IX, § 1.

Provision for Equal Treatment

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. WASH. CONST. art. I, § 12.

West Virginia

Education Clause

The legislature shall provide, by general law, for a thorough and efficient system of free schools. W. VA. CONST. art. XII, § 1.

The legislature . . . shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand. W. VA CONST. art. XII, § 12.

Provision for Equal Treatment

The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay. W. VA. CONST. art. III, § 17.[230]

Wisconsin

Education Clause

The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours. WIS. CONST. art. X, § 3.

Provision for Equal Treatment

All men are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. WIS. CONST. art. I, § 1.

Wyoming

Education Clause

The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary. WYO. CONST. art. 7, § 1.

Provision for Equal Treatment

All laws of general nature shall have a uniform operation. WYO. CONST. art. 1, § 34.

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[230] *See* O'Neil v. City of Parkersburg, 237 S.E.2d 504 (W. Va. 1977).

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